114-654

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~942.~~ ~~611~~ 282

THE CITY OF NEW ORLEANS, PLAINTIFF IN ERROR,

vs.

JUDAH HART.

No. ~~943.~~ ~~611~~ 283

THE CANAL AND CLAIBORNE STREETS RAILROAD COMPANY, GARNISHEE, PLAINTIFF IN ERROR,

vs.

JUDAH HART.

114-654

No. ~~944.~~ ~~611~~ 284

THE CITY OF NEW ORLEANS, PLAINTIFF IN ERROR,

vs.

JUDAH HART.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

FILED SEPTEMBER 29, 1882.

SUPREME COURT OF THE UNITED STATES.

No. 942.

THE CITY OF NEW ORLEANS, PLAINTIFF IN ERROR,

vs.

JUDAH HART.

No. 943.

THE CANAL AND CLAIBORNE STREETS RAILROAD COMPANY, GARNISHEE, PLAINTIFF IN ERROR,

vs.

JUDAH HART.

No. 944.

THE CITY OF NEW ORLEANS, PLAINTIFF IN ERROR,

vs.

JUDAH HART.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

INDEX.

	Original.	Print.
Order extending time to file transcript	1	1
Certificate of clerk civil district court	2	1
Transcript	3	2
Default	49	24
Rule to set aside default and remand	49	24
Order rule to remand dismissed, &c	53	25
Motion and order setting aside default	53	25
Motion and order, default set aside	54	25
Plea to jurisdiction	55	26

	Original.	Print.
Exhibit referred to	59	27
Filing of answer	62	28
Order case to be reassigned	70	31
Hearing and continuance	71	31
Verdict on the plea	71	31
Verdict in cause	72	32
Rule for a new trial	73	32
Remittitur	76	33
Order rule for new trial discharged	77	33
Judgment	77	34
Bill of exception No. 1	79	34
Bill of exception No. 2	82	35
Petition and order for writ of error	85	36
Supplemental petition and interrogatories	87	37
Citation to Canal and Claiborne Street Railroad Company	91	38
Citation to New Orleans Shed Company	93	39
Answer of New Orleans Shed Company	95	40
Answer of Claiborne Street Railroad Company	98	41
Traverse of answers	101	42
Agreement as to disposition of funds	103	43
Plea of prescription of Canal and Claiborne Street Railroad Company	104	43
Hearing and verdict	104	44
Rule for new trial	106	44
Rule to quash execution	109	45
Answer to rule	125	50
Hearing and submission	126	51
Order judgment amended, nunc pro tunc	126	51
Hearing and submission of rule of Canal and Claiborne Street Railroad Company	127	51
Rule to expunge minutes of 19th instant	128	52
Motion in arrest of judgment by Canal and Claiborne Street Railroad Company	130	52
Order motion fixed	134	54
Order motion of Canal and Claiborne Street Railroad Company refused	134	54
Supplemental petition and interrogatories	134	54
Citation	139	56
Motion to quash reinstated	141	57
Hearing and continuance	141	57
Motion to quash seizure continued	142	57
Order expunging words from the minutes of April 19, 1882	142	57
Order motion in arrest of judgment overruled	144	58
Judgment against Canal and Claiborne Street Railroad Company	144	58
Bill of exception of Canal and Claiborne Street Railroad Company	145	58
Hearing and submission of motion to quash	148	59
Motion and order for supersedeas	149	60
Bond of Canal and Claiborne Street Railroad Company	150	60
Order motion to quash refused	153	61
Judgment on motion to quash	153	62
Petition and order for writ of error by City of New Orleans	155	62
Bond for writ of error by City of New Orleans	156	63
Bond for writ of error by City of New Orleans	158	63
Statement of facts	161	65
Bond for writ of error by City of New Orleans	169	67
Agreement relative to transcript	171	68

	Original.	Print.
Agreement	172	68
Clerk's certificate	174	69
Writ of error, City of New Orleans	175	69
Assignment of errors, City of New Orleans	176	70
Writ of error, Canal and Claiborne Streets Railroad Company	178	70
Assignment of errors, Canal and Claiborne Streets Railroad Company	179	71
Writ of error, City of New Orleans	184	73
Assignment of errors, City of New Orleans	185	74
Citation	187	74
Citation	189	75
Citation	191	76

a UNITED STATES OF AMERICA.

Circuit court of the United States, fifth circuit and eastern district of Louisiana.

JUDAH HART
versus
CITY OF NEW ORLEANS, AND CANAL AND CLAIBORNE STREETS RAILROAD COMPANY, garnishees. } No. 9662.

C. F. Buck, esq., city attorney for the City of New Orleans, plaintiff in error.

H. P. Ogden and J. R. Beckwith, esq's, for Canal and Claiborne Streets Railroad Company, garnishees, plaintiffs in error.

A. G. Brice and E. H. Farrar, esq's, for Judah Hart, defendant in error.

Writ of error returnable to the Supreme Court of the United States, at the city of Washington, D. C., the second Monday of October, A. D. 1882.

1 UNITED STATES OF AMERICA.

Circuit court of the United States, fifth circuit and eastern district of Louisiana.

JUDAH HART
vs.
CITY OF NEW ORLEANS. } No. 9662.

Order extending time to file transcript.—Extract from minutes November term, 1881.

NEW ORLEANS, *Monday, November 7th*, 1882[1].

This being the first Monday of November, A. D. 1881, and by law the first day of the November term of the circuit court of the United States for the fifth judicial circuit and eastern district of Louisiana, the same was duly opened by the marshal.

Present, Hon. Don A. Pardee, circuit judge.

JUDAH HART
vs.
CITY OF NEW ORLEANS. } No. 9662.

On motion of A. G. Brice and E. H. Farrar, of counsel for plaintiff, and on suggesting to the court the annexed certificate of the clerk
2 of the civil district court for the parish of Orleans—

It is ordered that the plaintiff and remover be allowed until next Monday, the 14th instant, inclusive, to file in this court the transcript of the proceedings had in said civil district court.

Certificate of clerk of civil district court.—Filed November 7th, 1882[1].

Civil district court, parish of Orleans.

JUDAH HART
vs.
CITY OF NEW ORLEANS. } No. 4414.

I, James T. Clark, clerk of said court, do hereby certify that on Saturday, November 5th, 1881, there was entered in this cause an order transferring the same to the circuit court of the United States for the fifth circuit and district of Louisiana, and that so short a time will elapse between said 5th of November and the return day, the 7th of November, that it will be impossible to finish the transcript to be filed in said circuit court, and that an additional delay of one week is necessary for that purpose.

3 Witness my hand and the seal of my office, this 7th day of November, 1881.

[SEAL.] (Signed) JAS. T. CLARK, *Clerk*,
Pr. H. MARTIN, *D'y Clerk*.

Transcript from civil district court, parish of Orleans.— Filed November 12th, 1881.

To the honorable the judges of the civil district court in and for the parish of Orleans, and State of Louisiana:

Judah Hart, a citizen of the State of New York, residing in the city of New York, with respect sheweth:

That the City of New Orleans, a municipal corporation organized under the laws of the State of Louisiana, and as such a citizen of said State, is justly and truly indebted unto your petitioner in the full sum of one hundred and twenty-two thousand and sixty-nine $\frac{58}{100}$ dollars, with legal interest on said sum in the various amounts and from the various dates hereinafter specified, for this, to wit:

4 That the said defendant having become indebted and various times and to various persons for labor done, services rendered, and materials furnished to her in the performance of her municipal functions, has, by various ordinances duly passed and promulgated, acknowledged the said indebtedness and ordered the payment of the same.

That the payees of the said ordinances, with the knowledge and consent of the said defendant, have transferred to your petitioner their rights to obtain payment of the same.

That a complete list of the number of said ordinances, the date of their approval, the names of the payees, and the amounts due them is hereto annexed and made part hereof, and marked "Exhibit A," annexed to and made part of this petition.

Petitioner further prays for costs and general relief.

(Signed) A. G. BRICE,
E. H. FARRAR,
Att'ys.

Stamps affixed to the value of six $\frac{25}{100}$ dollars, and duly cancelled.

5 (Endorsed:) No. 4414. Civil district court, parish of Orleans, Judah Hart vs. City of New Orleans. Petition. Filed Nov. 4. 1881. (Signed) Frank Wall, d'y clerk. (Signed) A. G. Brice, E. H. Farrar, att'ys.

Citation.

STATE OF LOUISIANA:

Civil district court for the parish of Orleans, in the city of New Orleans.

JUDAH HART
vs.
CITY OF NEW ORLEANS. } No. 4414.

City of New Orleans, thro' its proper officer:

You are hereby summoned to comply with the demand contained in the petition of which a copy accompanies this citation, or deliver your answer to the same in the office of the clerk of the civil district court for
6 the parish of Orleans, within ten days after the service hereof.

Witness the honorables A. L. Tissot, W. T. Houston, F. A. Monroe, N. H. Righter, Henry L. Lazarus, judges of the said court, this 4th day of November, in the year of our Lord 1881.

(Signed) ALEX. T. DONOVAN,
Deputy Clerk.

Court-house, opposite Jackson Square.

Stamps affixed to the value of fifty cents, and duly cancelled.

(Endorsed:) No. 4414. Civil district court for the parish of Orleans. Judah Hart versus City of New Orleans. A. G. Brice & E. H. Farrar, attorneys. Copy of petition and citation inside to be served on City of New Orleans.

Received Nov'r 4th, 1881, and on the 4th day of November, 1881, I served a copy of the within citation and accompanying petition on the City of New Orleans, defendants herein, through Jos. A. Shake-
7 speare, its mayor, in person.

Returned same day.

(Signed) JOHN E. SICKFORT,
D'y Sheriff.

Exhibit A.—Filed with petition November 4th, 1882[1].

8 No. 1.

No. ord'ce.	Date.	To whom due.	Amount.
3088	Ap'l 20, '75	L. H. Pilic	$439
3218	Aug. 17, '75	Fireman's Char'ble Ass'on of N. O	271 44
3219	" "	J. McPhelin	135
Do.	" "	do.	135
3218	" "	Fireman's Char'ble Ass'n N. O	271 45
Do.	" "	do. do.	271 45
3232	" 31, '75	do. do.	271 45
3218	" "	do. do.	271 45
3232	" 31, '75	do. do.	271 45
3242	Sept. 15, '75	J. McPhelin	232 50
3262	Oct. 5, '75	Fire department N. O	271 45
Do.	" "	Firemen's Charitable Ass'n. 7th dist	25
Do.	" "	do. do. N. O.	271 44
Do.	" "	do. do. do.	271 45
3275	" 12, '75	Wm. Fagan	1,000
Do.	" "	J. McPhelin	270
3288	Nov. 2, '75	Firemen's Charitable Ass'n N. O	271 45
Do.	" "	do. do. do.	271 45
3282	Dec. 7, "	do. do. do.	271 25
3558	Jan'y 11, '76	do. do. do.	215
3557	Feb'y 1, 76	Langshaw & Baker	60 03
Do.	" "	J. H. Downs	10
3564	" 15, '76	Thos. Pickles	431 45
3755	Dec. 5, '76	N. O. Times	35 25
3709	Nov. 23, '76	W. J. Kelly	128 43
3710	" "	Firemen's Char'ble Ass. N. O	82 58
Do.	" "	do. do. do.	82 58
3718	" "	Page & Co	82 56
Do.	" "	Dennis Erwin	31 25
3720	" "	J. R. Clay	949 70
Do.	" "	Wm. Fagan	4,315 40
Do.	" "	do.	1,095 50
Do.	" "	Jno. McPhelin	510
9		Amount forward	13,524 51
		Amount forward	$13,524 51
3721	Nov. 23, '76	Firemen's Charitable Ass'n N. O	404 61
Do.	" "	do. do. do.	333 33
Do.	" "	do. do. 7th dist	100
Do.	" "	do. do. N. O	37 10
Do.	" "	do. do. "	82 58
Do.	" "	do. do. "	45 48
3732	" 28, '76	Wm. Fagan	6,188 70
Do.	" "	do. do.	926 "
3783	" "	A. Lambert & Co	132 30
Do.	" "	N. O. Excavating Co	60
Do.	" "	Dennis Erwin	43 50
Do.	" "	W. J. Kelly	44 50
3736	" "	Firemen's Charitable Ass'n N. O	82 58
Do.	" "	" " " "	82 58
Do.	" "	" " " 5th dist	103 35
3741	" "	Wm. Fagan	652 05
3742	" "	Mrs. A. Weigel	15
Do.	" "	W. J. Kelly	188 10
Do.	" "	" " "	126 30
3742	" "	A. Zwibel	6 50
3766	Dec. 15, '76	Firemen's Charitable Ass'n	333 33
3715	Nov. 23, '76	P. L. Bonny	325 "
3728	" 28, '76	I. P. Lartigue	40
Do.	" "	J. O. Landry	325
Do.	" "	N. C. Snethen	193 20
Do.	" "	B. H. Watkins	145
Do.	" "	H. A. Autz	87
Do.	" "	B. M. Harrod	150
Do.	" "	C. Steencken	154
Do.	" "	W. J. Commerford	72 50
Do.	" "	J. Brugerman	30
Do.	" "	W. B. McCutchon	123
Do.	" "	T. A. James	123
		Carried forward	$25,280 10
10		Amount forward	$25,280 10
3738	Nov. 28, '76	Mrs. McCormack	72 50
Do.	" "	J. Schialingscamp	24

Exhibit A.—Filed with petition November 4th, 1882[1]—Continued.

	No. ord'ce.	Date.	To whom due.	Amount.
	Do.	" "	D. Tranchard	31 50
	Do.	" "	M. Dwyer	28 50
	Do.	" "	H'y Fergerson	50
	Do.	" "	H. Culligan	46 50
	Do.	" "	J. O'Connor	46 50
	Do.	" "	J. Aharant	39
	Do.	" "	D. Ryan	39
	Do.	" "	Ed. Conners	37 50
	Do.	" "	do.	1 50
	Do.	" "	P. Wecker	1 50
	Do.	" "	M. Canfield	1 50
	Do.	" "	Wm. Welsh	1 50
	Do.	" "	J. Durr	1 50
	Do.	" "	T. Main	71 25
	Do.	" "	R. L. Meekens	71 25
	Do.	" "	Mrs. Hayes	71 25
	Do.	" "	M. O. Matrah	19 50
	Do.	" "	M. Keegan	33
	Do.	" "	Wm. Dowling	36
	Do.	" "	M. Maram	46 50
	Do.	" "	O. Damestres	37 50
	Do.	" "	J. Cousey	20
	Do.	" "	J. McLane	7 50
	Do.	" "	E. Cane	39
	Do.	" "	Jno. Gaberhardt	39
	Do.	" "	G. Hunt	39
	Do.	" "	M. Eagan	6
	Do.	" "	N. Cullan	39
	Do.	" "	D. McKernon	50
	Do.	" "	J. Barrett	52
	Do.	" "	A. Chestant	583 33
			Amount forward	$26,963 68
11			Amount forward	26,963 68
	3728	Nov. 28, '76	R. McLaughlin	45
	Do.	" "	Geo. Dickson	40
	Do.	" "	J. McCue	37 50
	3731	" "	L. Thompson	40
	3737	" "	B. H. Watkins	145
	Do.	" "	C. H. Roberts	100
	Do.	" "	H. A. Autz	87
	Do.	" "	N. C. Sneethen	193 20
	Do.	" "	J. Furneau	108 75
	Do.	" "	J. McCue	40
	Do.	" "	T. S. Hardee	75 80
	Do.	" "	J. Donovan	60
	Do.	" "	T. E. Burke	100
	Do.	" "	Geo. Dickson	40
	Do.	" "	C. Steencken	154
	Do.	" "	R. McLaughlin	45
	Do.	" "	F. Grazer	100
	Do.	" "	Hy. Elwell	100
	Do.	" "	Geo. Lawrence	100
	Do.	" "	J. Garfield	90
	Do.	" "	O. McCloskey	90
	Do.	" "	J. D. Baxter	125
	Do.	" "	C. J. Taylor	40
	Do.	" "	Peter Harris	40
	3738	" "	P. Murphy	65
	Do.	" "	F. K. Renton	25 50
	Do.	" "	T. Duffy	71 25
	Do.	" "	J. Hennessy	24
	Do.	" "	J. Moran	9
	Do.	" "	M. Freret	62
	Do.	" "	J. Kenner	13 50
	Do.	" "	Wm. Murray	36
	Do.	" "	J. Moran	40 25
			Carried forward	$29,306 43
12			Amount forward	$29,306 43
	3740	Nov. 28, '76	P. Gravois	125
	Do.	" "	C. Curtis	60
	Do.	" "	R. A. Bailey	85
	3762	Dec. 15, '76	J. McCue	42 50
	3715	Nov. 23, '76	Leon Bertoli	325

Exhibit A.—Filed with petition November 4th, 1882[1]—Continued.

No. order.	Date.	To whom due.	Amount.
3737	" 28, '76	J. O. Landry	325
3738	" "	P. L. Bouny	325
3762	Dec. 15, '76	R. McLaughlin	47 50
Do.	" "	Geo. Dickson	40
Do.	" "	N. C. Snethen	93 20
Do.	" "	C. Steenthen	154
Do.	" "	W. J. Commerford	72 50
Do.	" "	J. Furneaux	108 75
Do.	" "	P. B. Leeds	150
Do.	" "	O. McCauley	90
Do.	" "	J. Garfield	90
Do.	" "	J. D. Baxter	125
Do.	" "	H. Elwell	100
Do.	" "	J. Bogle	66 66
Do.	" "	T. E. Burke	100
Do.	" "	F. Tenement	60
3763	" "	P. Murphy	72 50
Do.	" "	B. McKennon	58
Do.	" "	J. Barnett	54
Do.	" "	J. Tandy	39
3764	" "	A. Chestant	583 33
Do.	" "	C. Curtis	60
Do.	" "	L. Thompson	40
Do.	" "	F. Pike	60
4476	Ap'l 30, '78	J. McCue	42 50
		Carried forward	$32,900 87
13		Amount forward	$32,900 87
2672	July 7, '74	Wm. Hudson	43 75
Do.	" "	W. Devry	15 75
Do.	" "	L. Lavigne	15 75
Do.	" "	J. Ganshier	15 75
Do.	" "	Jos. Petifels	40
Do.	" "	P. O'Brien	40
Do.	" "	D. Booth	75
Do.	" "	T. Redwood	75
Do.	" "	J. W. Labostrie	55
Do.	" "	S. Littlefield	11
Do.	" "	W. Bets	22 50
Do.	" "	J. Alexandre	23
Do.	" "	C. Crewett	24 50
Do.	" "	Wm. Butcher	33
Do.	" "	T. Develen	47 50
Do.	" "	Hy. Jones	28
Do.	" "	A. Ganshier	30
Do.	" "	S. Scott	9
Do.	" "	O. J. Muny	16
Do.	" "	Wm. Abell	150
Do.	" "	T. Keating	24
2674	" "	J. McGimnty	52
2672	" "	A. Cross	24
2777	Oct. 6, '74	J. J. Auburtin	150
2783	" "	Don. Clince	52
Do.	" "	B. Walker	42 85
Do.	" "	J. B. Burry	52 50
2801	" "	J. F. Winston	60
2918	Jan'y 5, '75	T. G. Whithorn	250
2674	July 7, '74	F. C. Association, N. O	148 53
Do.	" "	do.	327 57
Do.	" "	L. C. Hans	66 17
2789	Oct. 13, '74	Jno. McPhelin	357
		Carried forward	$35,295 99
14		Amount forward	$35,295 99
2341	Oct. 7, '73	F. C. Ass'n, N. O.	369 75
6098	Aug. 19, "	P. Eligarde	37 25
2672	July 7, '74	C. Regsteen	14
2663	June 30, "	Wm. McQuoid	376
2747	Sept. 8, "	A. Conners	104
2818	Nov. 3, "	J. J. Aubertin	150
2704	Aug. 4, "	Laporte	43 30
2844	Nov. 17, "	A. Henderson	18
Do.	" "	J. Bidole	8 75
2704	Aug. 4, "	G. Hawkins	62 25
2672	July 7, "	H. Pupurst	70

Exhibit A.—Filed with petition November 4th, 1882[1]—Continued.

	No. ord'ce.	Date.	To whom due.	Amount.
	Do.	" "	W. C. Cottrill	12
	Do.	" "	A Gaser	31 50
	Do.	" "	T. Bailey	59 50
	Do.	" "	F. Askern	45
	Do.	" "	W. Smith	65
	Do.	" "	H. Hassinger	58 50
	Do.	" "	J. Walker	45
	Do.	" "	P. Grogan	40
	Do.	" "	A. Mathews	56 25
	Do.	" "	D. Branigan	86 60
	Do.	" "	J. N. Roger	12
	Do.	" "	J. Regstein	73 50
	2674	" "	J. Barrett	65
	2672	" "	F. Meteye	75
	2674	" "	M. Riordan	65
	Do.	" "	J. McDermott	52
	2661	June 30, '74	H. A. Autez	25
	2289	Sept. 2, '73	Wm. Hubert	48
	2344	Oct. 7, "	Jules Dejoie	65
	2969	Feb'y 2, '75	J. H. Holmes	25
	2672	July 7, '74	Thos. Eagan	52
			Carried forward	$37,606 14
15			Amount forward	$37,606 14
	2713	Aug. 11, '74	F. C. Association, N. O.	560 33
	Do.	" "	do.	560 33
	Do.	" "	do.	439 67
	Do.	" "	do.	560 33
	Do.	" "	do.	560 33
	2749	Sept. 8, '74	do.	560 33
	Do.	" "	do.	560 33
	Do.	" "	do.	560 33
	Do.	" "	do.	560 33
	2873	Dec. 8, '74	do.	560 33
	2887	" 15, '74	Wilson & Fagan	29 12
	2919	Jan'y 5, '75	F. C. Association, N. O.	68 95
	2946	" 19, '75	Wilson & Fagan	74 40
	"	" "	do.	46 50
	3307	Nov. 16, '75	N. O. Times	8 15
	2673	July 7, '74	T. O'Neil	25
	2688	" 14, '74	Jno. McPhelin	645
	3727	No. 28, '76	Jno. Donohue	47 50
	Do.	" "	Cath. Pierce	77 50
	Do.	" "	Mrs. Cooney	71 25
	Do.	" "	Mrs. Condon	71 25
	Do.	" "	P Pigman	39
	Do.	" "	S. S. Andrees	65
	Do.	" "	T. Finnan	46 50
	Do.	" "	Hy. Wolforth	71 25
	Do.	" "	Mrs. Nichols	71 25
	Do.	" "	M. Malloy	65
	Do.	" "	Mrs. Burns	77 50
	Do.	" "	Geo. Panther	25
	Do.	" "	J. Voirath	39 17
	Do.	" "	D. Taney	65
	Do.	" "	J. R. Anstead	31
	Do.	" "	Jno. Crowley	39
			Carried forward	$44,878 07
16			Amount forward	$44,878 70
	3727	Nov. 28, '76	T. Dunn	39
	Do.	" "	D. Horne	46 50
	Do.	" "	Geo. Maas	65
	Do.	" "	T. Burdette	39
	Do.	" "	F. Valentine	28 50
	Do.	" "	M. Weldon	28 50
	Do.	" "	C. Moran	33
	Do.	" "	Ed. Glannon	65
	Do.	" "	M. Reddy	24
	Do.	" "	Chas. Babcock	43 34
	Do.	" "	Thos. Owens	25
	Do.	" "	Wm. Murphy	39
	Do.	" "	M. Dennis	39
	Do.	" "	Pat. Keanry	39

Exhibit A.—Filed with petition November 4th, 1882[1]—Continued.

	No. ord'ce.	Date.	To whom due.	Amount.
	Do.	" "	J. Tandy	15
	Do.	" "	D. Clowny	52
	Do.	" "	L. T. Raynol	78
	Do.	" "	J. Carrick	52
	Do.	" "	Geo. Gertis	52
	Do.	" "	C. Lockerly	52
	Do.	" "	J. Barrett	52
	Do.	" "	P. Givens	52
	Do.	" "	P. Monaghan	52
	3728	Nov. 28, '76	Leon Bertoli	325
	3715	" 23, '76	J. B. Kelly	100
	Do.	" "	J. McCue	37 50
	Do.	" "	J. McCandlish	123
	Do.	" "	T. A James	123
	Do.	" "	C. Steencken	154
	Do.	" "	N. Larkin	27 81
	Do.	" "	Wm. Werckley	40
	Do.	" "	P. Ramos	200
	Do.	" "	S. E. Percy	200
			Carried forward	$47,219 22
17			Amount forward	$47,219 22
	2672	July 7, '74	Hy. Geale	78
	"	" "	F. A. Sauve	78
	"	" "	P. Harris	39
	"	" "	J. F. Winston	39
	"	" "	J. S. Rodriguez	100
	"	" "	Mrs Jacobs	81
	"	" "	M. H. Hanmore	60
	"	" "	M. Lacey	35
	"	" "	M. Murphy	7
	"	" "	J. Dillon	35
	"	" "	C. H. Butler	75
	"	" "	C. Flory	100
	"	" "	Mrs. J. Ormsley	82 50
	"	" "	do. do.	82 50
	"	" "	F. H. Burke	65 "
	"	" "	L. Whitton	52
	"	" "	F. Foudal	45 50
	"	" "	J. Hawkins	73 50
	"	" "	L. V. Fremaux	78
	"	" "	J. Pierce	39 35
	"	" "	Ed. Kelly	45 50
	2674	" "	P. Gibbon	67 50
	"	" "	P. Monaghan	54 75
	"	" "	C. Newhouse	45 37
	"	" "	Ed. Maher	49 50
	"	" "	J. Cow	18
	"	" "	F. Quinn	22
	"	" "	M. Wisely	50
	"	" "	J. Falton	50 50
	"	" "	H. Fitzgerald	48 50
	"	" "	Jos. Burns	15
			Carried forward	$48,931 19
18			Amount forward	$48,931 19
	3715	Nov. 23, '76	J. V. Guilotte	166 66
	"	" "	R. Forester	100
	"	" "	J. Garfield	90
	3716	" "	P. Murphy	65
	"		P. Duffy	70
	"		M. Eagan	5
	"		Thos. Culinaun	1 50
	"		Mrs. Curley	71 25
	"		Geo. Gurthur	3 75
	"		Mrs. Hearey	72 50
	"		Mrs. McCulloch	77 50
	"		J. O. Conner	45
	"		F. O. Neil	50
	"		Mrs. Cooney	72 50
	"		Mrs. Connolly	72 50
	"		Mrs. McGary	72 50
	"		P. Gwin	60
	"		J. Golding	5
	"		M. Moruns	46 50

Exhibit A.—Filed with petition November 4th, 1882[1]—Continued.

	No. ord'ce.	Date.	To whom due.	Amount.
	3558	Jan'y 11, '76	F. C. Association, N. O	47 13
	3383	Feb'y 8, '76	Luzenburg Hospital	513 44
	"	" "	The heirs of Jno. Steedel	623 87
	3721	Nov. 23, '76	F. C. Association of N. O	1,096 29
	3736	" 28, '76	do. do.	1,096 29
	2300	Sept. 9, '73	do. do.	3,295 23
	3332	Dec. 12, '75	T. Hasam	162
			Carried forward	$56,882 56
19			Amount forward	$56,882 56
	2622	July 7, '74	Mrs. Laporte	76 50
	"	" "	H. L. Garden	60
	"	" "	W. Waddy	78 75
	"	" "	Mrs. Cowan	75
	"	" "	W. Butcher	77
	"	" "	A. Bentson	73 50
	"	" "	W. Kern	68 63
	2661	June 30, '74	H. H. Walsh	250
	2747	Sept. 8, '74	J. Mazit	70
	"	" "	L. Ward	65
	"	" "	J. L. Dazagarut	62 50
	"	" "	Wm. Sterling	34
	"	" "	Wm. Maston	62
	"	" "	A. Eager	24 50
	"	" "	B. Morton	52
	"	" "	Mrs. Cowan	75
	"	" "	J. Smith	36
	"	" "	J. Lepper	78
	"	" "	J. Hire	96
	"	" "	J. V. Labonsque	53 75
	"	" "	J. Scott	42 85
	2783	Oct. 6, '74	H. Claiborne	44 60
	"	" "	E. Davis	42
	"	" "	P. Quinn	45 50
	"	" "	J. Quarles	45 50
	"	" "	J. Scott	45 50
	"	" "	J. Luki	60
	"	" "	L. Rock	49
	"	" "	E. Herrey	35
	"	" "	J. Palin	40 25
	2777	" "	J. Hettinger	89 33
	3715	Dec. 23, '76	J. Howard	16 66
	3763	" 15, "	P. Scanlan	39
			Carried forward	$58,939 88
20			Amount forward	$58,939 88
	3763	Dec. 15, '76	Wm. Murphy	39
	"	" "	J. Gaberhardt	39
	3716	Nov. 23, '76	F. Baker	6 30
	"	" "	C. Schnieder	4 50
	"	" "	C. Brady	3 75
	"	" "	F. Grotez	3 75
	"	" "	J. Schillingkamp	3 75
	"	" "	P. Endil	3 75
	"	" "	Wm. Murray	3 75
	"	" "	Jno. Aharant	3 75
	"	" "	M. Dendinger	3 75
	"	" "	J. Glannon	3 75
	"	" "	Wm. Scheran	3 75
	"	" "	Dan. Ryan	3 75
	"	" "	Ed. Cosgrove	3 75
	"	" "	Thos. Doyle	3 75
	"	" "	A. Bachemin	3 75
	3721	" "	F. C. Ass'n, N. O	52 58
	3718	" "	Mrs. A. Weigel	15
	3729	Nov. 28, "	Wm. Perrin	11 25
	3738	" "	Wm. Murphy	30
	"	" "	W. Steinback	100
	"	" "	P. Scanlan	39
	"	" "	W. Perrin	2 25
	3727	" "	Jno. Aharant	39
	"	" "	Jno. Springer	39
	"	" "	Mrs. Ford	56 25
	"	" "	Phil. Endel	38 25
	3737	" "	D. Orando	48 50

Exhibit A.—Filed with petition November 4th, 1882[1]—Continued.

	No. ord'ce.	Date.	To whom due.	Amount.
	3727	" "	C. Rieff	26
	3736	" "	Fire dep't, city	52 58
	"	" "	F. C. A. of N. O	304 60
				$59,931 69
21	4302	Jan'y 19, '78	J. C. Beard	150
	"	" "	M. Whalen	41 95
	"	" "	M. Furlong	48 40
	"	" "	J. D. Miller	48 40
	"	" "	H. Donnelly	48 40
	"	" "	J. McEatee	48 40
	"	" "	J. Hanaby	48 40
	"	" "	J. C. Welshams	100
	"	" "	E. W. Hamilton	59 15
	"	" "	R. C. Morgan	4 75
	"	" "	J. Blassini	62 90
	"	" "	W. Bassett	41 95
	"	" "	J. Burgmeris	48 40
	"	" "	B. J. Blair	45 15
	"	" "	B. Durnin	50
	"	" "	D. Malone	50
	"	" "	F. Quinn	50
	"	" "	R. Phillips	50
	"	" "	H. A. Robinson	43 55
	"	" "	Peter Meyers	43 55
	"	" "	J. Doody	43 55
	"	" "	J. Garlick	43 55
	"	" "	H. N. Graham	50
	"	" "	M. Sullivan	46 75
	"	" "	T. McKay	48 40
	"	" "	J. O Brien	48 40
	"	" "	F. McDonald	50
	"	" "	J. W. Steele	45 15
	"	" "	J. J. McEatee	41 95
	"	" "	J. Carey	40 30
	"	" "	E. Hewitt	48 40
	"	" "	F. Rice	41 35
	"	" "	W. E. Way	50
			Carried forward	$1,681 75
22			Amount forward	$3,030 13
	4302	Jan'y 9, '78	T. Ferguson	43 55
	"	" "	J. M. Delavalle	10 15
	"	" "	W. Klinger	48 40
	"	" "	G. T. Gallagher	37 10
	"	" "	L. McLaughlin	3 20
	"	" "	B. Teller	25 80
	"	" "	G. Cugog	32 25
	"	" "	H. Hill	35 50
	"	" "	J. Morgan	38 70
	"	" "	A. Millett	32 30
	"	" "	J. B. Hunter	60 80
	"	" "	M. O. Rorke	37 10
	"	" "	A. Patterson	8 05
	"	" "	J. J. Cionan	6 30
	"	" "	J. Teon	33 85
	"	" "	D. Douglas	38 70
	"	" "	A. J. Metegé	38 70
	"	" "	E. O. Neil	27 40
	"	" "	J. W. Shubert	11 30
	"	" "	T. Ryder	46 75
	"	" "	J. Dunn	20 95
	"	" "	J. Torregano	37 10
	"	" "	P. Toole	17 75
	"	" "	A. Maraberous	48 40
	"	" "	W. Morrison	45 15
	"	" "	J. Bourgeois	46 75
	"	" "	J. Grima	48 55
	"	" "	E. Rewz	32 25
	"	" "	C. Henderson	27 40
	"	" "	do.	1 30
	"	" "	J. T. Gonzales	37 10
	"	" "	F. J. Koener	46 75
			Carried forward	$4,050 48

Exhibit A.—Filed with petition November 4th, 1882[1]—Continued.

	No. ord'ce.	Date.	To whom due.	Amount.
23			Amount forward	$1,681 75
	4302	Jan'y 9, '78	A. Heiman	46 75
	"	" "	M. Cheevers	27 40
	"	" "	E. Peters	43 55
	"	" "	P. Hurmon	38 70
	"	" "	F. Reilly	50
	"	" "	R. Hamilton	45 15
	"	" "	J. H. Nixon	48 40
	"	" "	T. Nolan	50
	"	" "	T. Abadie	48 40
	"	" "	W. H. Feeny	50
	"	" "	J. R. Glenny	50
	"	" "	H. Tully	50
	"	" "	M. Garin	45 15
	"	" "	M. McDermott	46 75
	"	" "	W. Rodgers	4 63
	"	" "	J. Mealley	46 75
	"	" "	P. Berce	48 40
	"	" "	P. Stanley	41 95
	"	" "	R. C. Migent	40
	"	" "	R. Clark	40 30
	"	" "	J. Murphy	60
	"	" "	W. Hendricks	27 30
	"	" "	J. Zeller	37 10
	"	" "	J. Devine	37 10
	"	" "	N. Cline	17 75
	"	" "	Cronan	8 40
	"	" "	L. Freicht	41 95
	"	" "	D. Shea	30 65
	"	" "	D. Burke	50
	"	" "	N. Block	38 70
	"	" "	C Geary	46 75
	"	" "	J. H. Littleton	46 75
	"	" "	J. Carter	43 55
			Carried forward	$3,030 13
24			Amount forward	$4,050 48
	4282	Jan'y 2, '78	R. Barry	66 66
	"	" "	W. Jones	15
	"	" "	A. Lacaze	20
	"	" "	Jas. Barry	125
	"	" "	Jno. Tobin	48
	"	" "	M. Logan	90
	"	" "	Mrs. Place	30
	"	" "	W. W. Heylan	60
	"	" "	L. Lamb	75
	"	" "	J. Cullerton	75
	"	" "	J. Gleason	75
	"	" "	A. L. Labarre	125
	"	" "	A. H. Wilberding	125
	"	" "	E. D. Terrebonne	125
	"	" "	Wm. Kerstin	60
	"	" "	R. F. Watkins	17 80
	"	" "	L. H. Pilie	150
	4283	" "	M. A. Tracey	45
	"	" "	F. Mack	39
	"	" "	M. Gallagher	78
	"	" "	R. Forrester	84
	"	" "	J. Barrett	56
	"	" "	Mrs. M. Long	70
	"	" "	A. M. Dorand	78
	"	" "	B. D. Collins	50
	4284	" "	N. V. Garridel	50
	"	" "	W. H. Watkins	50
	"	" "	Chs. Curtis	50
	"	" "	A. Landry	100
	"	" "	E. Slaughter	100
	"	" "	Jas. Hott	100
	"	" "	R. A. Bailey	50
	"	" "	J. W. Jarreau	50
			Carried forward	6,382 94
25			Amount forward	$6,382 94

Exhibit A.—Filed with petition November 4th, 1882[1]—Continued.

No. or Ord'e.	Date.	To whom due.	Amount.
4284	Jan'y 2, '78	N. Woodie	50
"	" "	C. A. O'Rourke	57 50
"	" "	R. L. Bruce	150
4248	" "	R. A. Bailey	50
"	" "	L. D. Allen	50
"	" "	J. U. Jarreau	50
"	" "	N. Woodie	50
4246	Dec. 11, '77	J. Sanford	20 50
4247	" "	Jas. Moss	40
"	" "	W. McCue	50
"	" "	L. D. Terrebonne	125
4249	" "	Ed. Ryan	73 35
"	" "	H. W. Graham	50
"	" "	M. Furlong	43 35
"	" "	F. C. Welshams	100
"	" "	T. McKay	50
"	" "	F. O. Bricu	46 65
"	" "	E. Grady	18 35
"	" "	R. Carrick	45
"	" "	P. Meyers	46 65
"	" "	B. G. Blair	46 65
"	" "	G. Myers	50
"	" "	Wm. Myham	48 35
"	" "	G. O. Williamson	60
"	" "	P. Bercé	48 35
"	" "	D. Burns	46 65
"	" "	J. Meallie	45
"	" "	A. J. Moraherns	41 65
"	" "	J. Sexton	46 65
"	" "	D. Shay	38 35
"	" "	F. Ducoing	46 65
"	" "	M. Troge	50
"	" "	T. Ryan	36 65
		Carried forward	$8,154 24
26		Amount forward	$8,154 24
4249	Dec. 11, '77	G. Jeannie	48 35
"	" "	N. Lohr	48 35
"	" "	C. E. O'Neil	45
4205	Nov. 13, '77	St. Alphonsus Asylum	100 33
4206	" "	F. C. Ass'n, 6th dis't	150
"	" "	do. N. Orleans	106
"	" "	do. do.	106
"	" "	do. do.	106
"	" "	do. do.	63
"	" "	do do.	106
4208	" "	R. H. Bartley	20
"	" "	Wm. Carter	15
"	" "	do.	10
"	" "	Mrs. C. Weigel	15
"	" "	N. O. Times	19 15
"	" "	A. Lambert	6
4220	" 20, '77	N. O. Times	14
4250	Dec. 11, '77	St. Alphonsus Asylum	100 33
4251	" "	F. C. A., N. O.	106
4251	" "	do. do.	63 65
"	" "	do. do.	106
"	" "	do. do.	106
"	" "	do. do.	53 10
"	" "	do. do.	52 90
4254	" "	Mrs. A. Weigel	15
4288	Jan'y 2, '78	N. O. Times	13 50
4432	Ap'l 2, '78	F. Klien	15
4441	" 11, "	M. C. Hogan	9 30
4604	July 16, "	M. Kaiser	600
			$10,373 85

Exhibit A.—Filed with petition November 4th, 1882[1]—Continued.

27 To whom due.	Ordinance.	Date.	Amount.
John Burke	1273	Dec. 26, '71	150
Do.	1779	Oct. 2, '72	150
Do.	1543	May 29, '72	150
Do.	1940	Dec. 31, '72	67 65
T. Durell	1430	Ap'l 2, '72	208 55
Do.	1273	Dec. 26, '71	208 30
John Burke	1613	July 2, '72	150
Do.	1162	Nov. 1, '71	150
Do.	1483	Ap'l 30, '72	150
Do.	1228	Dec. 5, '71	150
Do.	1333	Jan'y 30, '71	150
P. Gill	1611	June 26, '72	12
St. Elizabeth Asylum	1794	Oct. 9, '72	602
J. Muller	1848	Nov. 6, '72	45
C. E. Babcock	3763	Dec. 15, '76	75
P. Murphy	3729	Nov. 28, '76	65
J. McManus	"	" "	11 46
W. J. Grady	"	" "	45
H. Harbler	"	" "	77 50
R. L. Meeklins	"	" "	67 50
Mrs. Mack	"	" "	71 25
Wm. Gorman	"	" "	65
J. Michel	"	" "	40
F. Geis	"	" "	39
J. Wilson	"	" "	39
A. J. Stephens	2818	Nov. 3, '74	150
Jno. Curry	4208	" 13, '77	14
Mrs. B. Lynch	3727	" 28, '76	36 25
A. Fleury	"	" "	77 50
L. Margoteau	"	" "	65
Mrs. M. Reilly	"	" "	47 50
C. T. Lena	"	" "	50
C. A. Butler	4247	Dec. 11, '77	50 64
J. Coffee	3729	Nov. 28, '76	19 50
Do.	3716	" 23, '76	3 75
Chas. Schneider	3727	" 28, '76	39
J. Dumourelle	4218	" 20, '77	5 75 3 75 27 31 — 36 81
Carried forward			$3,528 96
28 Amount forward			$3,528 96
Wm. Louergan	4249	Dec. 11, '77	46 65
T. Ramsey	4204 4237	Nov. 13, "	14 50
Do.	4302	Jan'y 9, '78	29 05
J. J. Pajol	4249	Dec. 11, '77	73 35
F. Flanagan	"	" "	50
C. E. Babcock	3738	Nov. 28, '76	75
Do.	"	" "	10
F. C. Association	3721	" 23, '76	225 63
T. Daily	3715	" "	50
Do.	3728	" 28, '76	50
J. G. Brown	3229	Aug. 31, '75	250
Do.	3285	Nov. 2, '75	250
J. Palmaserio	3709	" 23, '76	9 30
Do.	"	" "	46 50
J. Farley	3729	" 28, '76	19 50
P. Simms	3542	May 30, '76	490
H. Leonard	4249	Dec. 11, '77	50
J. Burns	3727	Nov. 28, '76	23 34
N. Bassett	4204 4237	" 13, '77	45 15
J. F. Brown	"	" "	46 75
B. J. Blair	"	" "	46 75
J. Carey	"	" "	48 40
D. Craven	"	" "	48 40
J. Grady	"	" "	27 40
T. North	"	" "	48 40
H. A. Robinson	"	" "	46 75
J. Tierney	"	" "	43 55
J. W. Carey	"	" "	29 05
E. Reagan	"	" "	29 05
J. Clark	"	" "	48 40
M. McDermott	"	" "	45 15
R. Poindexter	"	" "	8 05

Exhibit A.—Filed with petition November 4th, 1882[1]—Continued.

To whom due.	Ordinance.	Date.	Amount.
J. Krucker	"	" "	31 10
T. Sudric	"	" "	43 55
E. Muller	"	" "	45 15
J. Grauer	"	" "	33 85
S. Page	"	" "	48 40
W. Bell	"	" "	46 75
J. Cunningham	"	" "	25 80
R. Poindexter	"	" "	29 05
Carried forward			$6,156 68
29 Amount forward			6,156 68
H. O. Sheyer	4204 / 4237	Nov. 13, '77	48 40
N. Bassett	4249	Dec. 11, '77	46 65
J. T. Brown	"	" "	43 35
J. Carey	"	" "	46 65
D. Craven	"	" "	46 65
T. North	"	" "	46 65
J. Tierney	"	" "	48 35
G. T. McGill	"	" "	33 35
T. T. Askew	"	" "	50
J. Clark	"	" "	46 65
R. Poindexter	"	" "	41 65
S. Rice	"	" "	41 65
E. G. Duvillier	"	" "	58 65
Geo. Hearsey	"	" "	25
F. Sudric	"	" "	46 65
P. M. Dowling	"	" "	48 35
L. M. Dopp	"	" "	10
T. Norton	"	" "	45
W. T. Calte	"	" "	28 30
S. Page	"	" "	50
Tom Reynolds	"	" "	73 35
W. Bell	"	" "	45
J. Cunningham	"	" "	45
J. J. Donovan	"	" "	16
J. M. Gouldrick	"	" "	60
H. O. Sheyer	"	" "	50
J. J. Donovan	4302	Jan'y 9, '78	60
J. T. Brown	"	" "	46 75
A. Tenn	"	" "	9 70
D. Hennessey	"	" "	50
J. Kenney	"	" "	38 70
C. T. Walters	"	" "	35 50
T. North	"	" "	48 40
C. Routh	"	" "	32 25
J. Tierney	"	" "	45 15
T. Tracey	"	" "	45 15
G. T. McGill	"	" "	29 05
J. McGunn	"	" "	40 30
E. Reagan	"	" "	46 75
E. W. Sewell	"	" "	65
Carried forward			$7,890 68
30 Amount forward			$7,890 68
J. Clark	4302	Jan'y 9, '78	48 40
S. Rice	"	" "	48 40
G. T. Thompson	"	" "	45 15
E. G. Duvillier	"	" "	70 95
G. Hearsey	"	" "	22 60
F. Sudric	"	" "	48 40
P. M. Dowling	"	" "	48 40
L. M. Dopp	"	" "	41 95
J. A. Martin	"	" "	50
T. Morton	"	" "	43 35
S. Page	"	" "	45 15
T. Reynolds	"	" "	73 35
W. Bell	"	" "	41 95
J. Cunningham	"	" "	45 15
C. Spencer	"	" "	33 85
J. McGouldrick	"	" "	60
J. D. Houston	3825	Jan'y 30, '77	5,768 90
B. Galvin	4249	Dec. 11, '77	50 35
Ed. Reagan	"	" "	50
D. Hennessy	"	" "	50

Exhibit A.—Filed with petition November 4th, 1882[1]—Continued.

	To whom due.	Ordinance.	Date.	Amount.
	J. J. Donovan	"	" "	42
	J. McGouldrick	{4204 / 4237}	Nov. 13, '77	60
	J. J. Donovan	"	" "	60
	T. Reynolds	"	" "	73 35
	T. T. Askew	"	" "	50
	J. G. Roche	4284	Jan'y 2, '78	583 34
	T. M. Heatherton	4247	Dec. 11, '77	125
	C. Bogle	4282	Jan'y 2, '78	75
	J. Lynch	4247	Dec. 11, '77	70
	C. Bogle	"	" "	75
	J. H. Manuel	4193	Nov. 6, '77	33 34
	T. Tull	3727	" 28, '76	50
	J. H. Langwell	4193	" 6, '77	41 66
	F. Sherwell	"	" "	25
	W. H. Mamally	"	" "	25
	Jas. Pons	"	" "	20
	W. H. H. Reynolds	"	" "	50
	C. Boyle	"	" "	25
	P. Meallie	4283	Jan'y 2, '78	75
	Do.	4246	Dec. 11, '77	75
	Carried forward			$16,210 87
31	Amount forward			$16,210 87
	H. C. Stone	3258	Sept. 28, '75	41 66
	Do.	3231	Aug. 31, '75	41 66
	A. A. Maurere	"	" "	41 66
	C. E. Scully	4249	Dec. 11, '77	31 65
	E. Scully	{4204 / 4237}	Nov. 13, '77	48 40
	T. Nalin	4204	" "	35 08
	J. W. Porter	"	" "	47
	T. Shewell	4247	Dec. 11, '77	75
	A. Pecora	4302	Jan'y 9, '78	100
	T. Meallie	3799	" 11, '77	72 50
	Do.	3762	Dec. 15, '76	125
	Do.	3737	Nov. 28, '76	125
	W. Reynolds	3800	Jan'y 11, '77	16 50
	J. Burne	3763	Dec. 15, '76	39
	M. Lusk	3715	Nov. 23, '76	50
	Mrs. Brady	3800	Jan'y 11, '76	30
	Mrs. Callehan	"	" "	30
	P. Logan	"	" "	16 50
	J. McGovern	"	" "	27
	J. Collerton	3763	Dec. 15, '77	70
	P. Logan	"	" "	39
	J. Cullerton	3738	Nov. 28, '76	71 25
	Mrs. Callehan	"	" "	70
	P. McDermott	"	" "	36
	S. Hoffman	3716	" 23, '76	70
	Mrs. Brady	"	" "	72 50
	D. Orando	3737	" 28, '76	4 50
	N. Larkin	3715	" 23, '76	42 19
	Wm. Welsh	3716	" "	2 73
	J. Rogers	3738	" 28, '76	46 50
	H. Rothman	3716	" 23, '76	78
	J. Minor	"	" "	78
	C. Klemschmott	"	" "	78
	P. Tinan	"	" "	48 50
	N. Enssworth	3727	" 28, '76	36
	E. McDermott	"	" "	52
	E. L. Van Hooten	"	" "	36
	T. Tullhan	"	" "	27 74
	Vizard & Wilmuth	3709	" 23, '76	70
	F. C Association	3710	" "	52 58
	Carried forward			$18,283 97
32	Amount forward			$18,283 97
	St. Vincent Asylum	3730	Nov. 28, '76	171 77
	J. Kenny	2894	Dec. 22, '74	10 50
	W. T. Anderson	3258	Sept. 28, '75	62 50
	J. G. Brown	3215	Aug. 10, '75	250
	A. P. Keller	4195	Nov. 6, '77	125
	J. Burns	4248	Dec. 11, '77	150
	A. P. Keller	"	" "	125

Exhibit A.—Filed with petition November 4th, 1882[1]—Continued.

To whom due.	Ordinance.	Date.	Amount.
S. J. N. Smith	4284	Jan'y 2, '78	250
A. P. Keller	"	" "	125
J. Horan	4246	Dec. 11, '77	39
Do.	4194	Nov. 6, '77	40 50
Do.	4283	Jan'y 2, '78	18
T. J. Rapier	4247	Dec. 11, '77	150
R. McLaughten	"	" "	50
J. Logan	"	" "	90
W. Stubbs	3800	Jan'y 11, '77	22 50
Thos. Reynolds	3762	Dec. 15, '76	60
J. T. Lazier	3731	Nov. 28, '76	125
Do.	3719	" 23, "	125
H. Rowe	3763	Dec. 15, "	75
W. Stubbs	"	" "	39
J. Taber	"	" "	47 50
W. Stubbs	3738	Nov. 28, '76	39
J. Faber	"	" "	10
W. Stubbs	3716	" 23, '76	3 75
T. Reynolds	3737	" 28, '76	60
W. Stubbs	3800	Jan'y 11, '77	16 50
E. E. O'Brien	4476	April 30, '78	50
D. L. Minden	"	" "	3 50
E. R. Chevally	"	" "	24
L. Maden	"	" "	30
E. R. Chevally	"	" "	160
W. H. Reynolds	3715	Nov. 23, '76	150
J. Fitzpatrick	"	" "	150
E. Mittenberger	"	" "	150
P. Gravvis	3719	" "	125
A. Capla	"	" "	125
W. Stubbs	3729	" 28, '76	18
P. Blessy	"	" "	22 75
H. Rowe	3716	" 23, '76	7 50
Carried forward			$20,580 24
33 Amount forward			$20,580 24
J. E. Stacs	3719	Nov. 23, '76	125
H. Rowe	3727	" 28, '76	51 67
W. Stubbs	"	" "	24 67
F. C. Ass'n	3262	Oct. 5, '75	271 45
T. Tague	3742	Nov. 28, '76	15 50
Do.	3733	" "	7 50
Do.	"	" "	15
Do.	3718	" 23, '76	15
Do.	"	" "	15
Do.	"	" "	15
Do.	"	" "	13 50
Do.	"	" "	7 75
F. C. Ass'n, 5th dist.	3218	" "	54 85
J. G. Brown	3256	Sept. 28, '75	250
Ladies of Providence	3810	Jan'y 16, '77	17 50
Do. do.	3770	Dec. 15, '76	17 50
Do. do.	3739	Nov. 28, '76	17 50
Do. do.	3730	" "	17 50
Do. do.	3717	" "	17 50
Do. do.	3708	" 23, '76	17 50
Mrs. C. Bruner	3733	" 28, '76	22 50
J. M. Villavaso	3709	" 23, '76	25
F. C. Ass'n, 6th dist.	3710	" "	333 33
Leon Bertoli	3215	Aug. 10, '75	250
J. Garfield	2969	Feb'y 2, '75	3 59
J. Schulley	2672	July 7, '74	14 72
J. McCue	2872	Dec. 8, '74	15
A. Chastant	3231	Aug. 31, '75	209
R. McLaughlin	4476	Ap'l 30, '78	17 50
Jno. Glynn, jr	4283	Jan'y 2, '78	87 31
E. Reagan	4476	Ap'l 30, '78	16
F. C. Ass'n	3766	Dec. 15, '76	188 59
J. B. Leche	3801	Jan'y 11, '77	100
J. H. Grover	4247	Dec. 11, '77	208 35
A. P. Harrison	"	" "	275
W. J. Commerford	"	" "	83 33
Mrs. O. Lyons	"	" "	40 00
H'y Hamilton	"	" "	90

Exhibit A.—Filed with petition November 4th, 1882[1]—Continued.

To whom due.	Ordinance.	Date.	Amount.
W. J. Commerford	4282	Jan'y 2, '78	83 33
R. A. Bayley	3731	Nov. 28, '76	85
Carried forward			$24,716 18
34 Amount forward			$24,716 18
Jas. O'Neil	4195	Nov. 6, '77	333 33
Mrs. O. Lyons	4282	Jan'y 2, '78	40
A. J. Barry	3215	Aug. 10, '75	41 67
H. T. Evans	"	" "	41 67
F. C. Association	3262	Oct. 5, '75	271 45
Do. do.	3382	Dec. 7, '75	271 45
Do. do.	3288	Nov. 2, '75	212 22
Wm. Fagan	3306	" 9, '75	1,000
Do. do.	"	" "	400
Do. do.	"	" "	1,264 90
W. H. Foler	2736	Sept. 1, '74	100
Do. do.	2706	Aug. 4, '74	100
R. E. Diamond	3799	Jan'y 11, '77	209 68
J. Sullivan	4302	" 9, '78	46 75
C. Huchez	"	" "	100
Ladies of Providence	4205	Nov. 13, '77	49
T. J. Rapier	3799	Jan'y 11, '77	43 05
T. Dailey	3762	Dec. 15, '76	60
Do.	3737	Nov. 28, '76	60
J. Coffee	3800	Jan'y 11, '77	15 50
Do.	"	" "	22 50
J. Finck	4249	Dec. 1, '77	50
L. M. Pike	3769	" 15, '76	2,403 15
J. G. Haas	3727	Nov. 28, '76	66 67
O. Mayroune	3715	" 23, '76	40
J. Moore	3716	" "	40 50
J. C. Murphy	3727	" 28, '76	65
H. Marks	3713	" 23, '76	30
J. Hennessy & Bro	3559	Jan'y 18, '76	164 50
P. McDonald	3716	Nov. 23, '76	1 50
Jas. Purcell	3727	" 28, '76	30
P. Sheridan	"	" "	46 50
Jas. Buckley	"	" "	39
Jas. Craigh	"	" "	29
Thos. Dennis	"	" "	39
W. H. Toler	2918	Jan'y 5, '75	100
Do.	2872	Dec. 5, '74	100
A. J. Stephens	"	" 8, '74	150
J. McMahon	2777	Aug. 6, '74	60
Tom McMahon	2736	Sept. 1, '74	60
Carried forward			$32,925 17
35 Amount forward			$32,925 17
M. Driscoll			
J. Murphy	3727	Nov. 28, '76	39
J. O'Brien	"	" "	39
R. Steward	"	" "	39
Thos. Brady	"	" "	42 75
Thos. Maguire	"	" "	42 75
H. Ford	"	" "	39
P. Gannon	"	" "	39
Wm. Welsh	"	" "	39
F. Flannagan	"	" "	7 50
Thos. Doyle	"	" "	36
E. F. Burns	"	" "	44
J. Maloney	"	" "	30
Pat. Skeban	"	" "	65
J. McGovern	"	" "	46 50
J. Hickey	"	" "	39
P. Kelly	"	" "	46 50
B. O. Neil	"	" "	39
J. Gallagher	"	" "	39
Ed. Cosgrove	"	" "	39
O. Duffy	"	" "	39
Jas. Kinney	"	" "	28 50
C. McCarty	"	" "	27
C. Terrebonne	"	" "	65
L. Scherding	"	" "	39

Exhibit A.—Filed with petition November 4th, 1882[1]—Continued.

To whom due.	Ordinance.	Date.	Amount.
M. McCormack	"	" "	39
J. Glannon	"	" "	39
P. Daniels	"	" "	54 25
J. Silentos	"	" "	45 50
P. Clinton	"	" "	10 50
P. Norton	"	" "	38 50
J. Garry	"	" "	39
J. Finnerty	"	" "	46 50
Jno. Garraghty	"	" "	46 50
H. Sais	"	" "	60
P. Smith	"	" "	42
J. Schulter	"	" "	43 50
J. Elchinger	"	" "	43 50
J. Pontein	"	" "	65
J. Stephens	"	" "	39
Carried forward			$34,565 42
36 Amount forward			$34,565 42
Joe. Heider	3727	Nov. 28, '76	3
Jno. Bender	"	" "	15
J. Metz	"	" "	22 50
Wm. Doyle	"	" "	38 25
M. Mulvey	"	" "	39
M. Coulen	"	" "	38 25
T. Mackey	"	" "	18
P. McGrath	"	" "	39
A. Roache	"	" "	39
M. Tardy	"	" "	39
Pat. Russell	"	" "	9
J. Rizatti	"	" "	39
Jno. Victor	"	" "	12
F. Dunn	"	" "	65
E. Schnell	"	" "	8 77
A. Bachemin	"	" "	39
P. Repath	"	" "	39
T. Hoffman	"	" "	39
J. Thomas	"	" "	39
J. Farley	"	" "	39
W. Flemming	"	" "	25
Jno. Meyer	"	" "	13 50
T. King	"	" "	39
P. Stark	"	" "	39
J. Donovan	"	" "	39
J. Jones	"	" "	39
E. Sweeney	"	" "	39
W. Luckskille	"	" "	39
E. Morgan	"	" "	39
J. White	"	" "	39
J. Roberts	"	" "	39
E. Dobson	"	" "	39
Jno Murphy	"	" "	39
T. Dower	"	" "	34 50
C. O Donnell	"	" "	100
J. Murphy	"	" "	65
M. Donovan	"	" "	39
Jas. Dwyer	"	" "	37 50
M O'Neil	"	" "	39
W. Calligan	"	" "	39
R. Donahue	"	" "	39
P. Hamilton	"	" "	22 50
Carried forward			$36,068 69
37 Amount forward			$36,068 69
David Letter	3727	Nov. 28, '76	30
Jno. Kaiser	"	" "	65
M. Dendiger	"	" "	39
P. McCormack	"	" "	39
J. Littleton	"	" "	39
H. Hugnet	"	" "	39
W. Ryan	"	" "	39
H. Gainer	"	" "	38 25
E. Ryan	"	" "	10 50
Jas. Schaff	"	" "	36 75
M. McNorton	"	" "	38 25
A. Faust	"	" "	30

Exhibit A.—Filed with petition November 4th, 1882[1]—Continued.

To whom due.	Ordinance.	Date.	Amount.
M. Brady	"	" "	45
P. McDonald	"	" "	39
Jas. Gallagher	"	" "	39
Thos Manning	"	" "	39
Geo. Crewes	"	" "	39
Jno. Lee	"	" "	39
M. Birmingham	"	" "	39
P. Shaff	"	" "	30
W. Bowen	"	" "	40
P. Blessy	"	" "	65
J. Langweil	"	" "	65
L. Bertrand	"	" "	39
J. B. Mitermer	"	" "	39
H. Meyers	"	" "	39
F. Waites	"	" "	39
C. C. Trouard	"	" "	39
B. Flannagan	"	" "	9
B. H. Hardee	"	" "	65
M. Getmone	"	" "	33 75
A. Otterman	"	" "	38 25
Jno Bright	"	" "	39
C. Stowey	"	" "	39
M. Dwyer	"	" "	39
C. Scully	"	" "	39
R. B. Stubbs	"	" "	100
O. A. Trevezant	"	" "	65
J. Batz	"	" "	38 25
Jno. Uhle	"	" "	40
Carried forward			$37, 731 69
38 Amount forward			$37, 731 69
M. Riordan	3727	Nov. 28, '76	52
W. Cramer	"	" "	52
P. Russell	"	" "	30
Jno. Ackert	"	" "	32 25
C. O. Neil	"	" "	52
E. Munch	"	" "	28 50
Jno. McLaughlin	"	" "	50 30
G. T. Cotton	"	" "	39
J. Dreaver	"	" "	39
J. Ryan	"	" "	39
J. Murphy	"	" "	39
J. Brady	"	" "	29 25
J. Tennison	"	" "	10 50
T. Davey	"	" "	27 75
P. McLoughlin	"	" "	29 25
J. McCabe	"	" "	29 25
Jno. Wilson	"	" "	29 25
Jno Buckley	"	" "	29 25
P. Murphy	"	" "	29 25
Jas. Grady	"	" "	29 25
Jno. Coats	"	" "	29 25
C. H. Fomo	"	" "	50 30
C. Lauler	"	" "	39
B. Taist	"	" "	37
D. Mertz	"	" "	19 50
X. Knecht	"	" "	29 25
T. Wheylan	"	" "	10 50
J. Albert	"	" "	12 75
C. Oakes	"	" "	9
W. R. Freret	"	" "	65
B. Flannagan	"	" "	30
H. McCabe	"	" "	30
H. Hewitt	"	" "	30
H. Martin	"	" "	40
E. R. Chevalley	"	" "	40
R. H. Brown	"	" "	40
Jno. Elfert	"	" "	40
C. Lehrick	"	" "	28 50
P. Casey	"	" "	15
J. Meagher	"	" "	22 50
Carried forward			$39, 048 29

Exhibit A.—Filed with petition November 4th, 1882[1]—Continued.

To whom due.	Ordinance.	Date.	Amount.
39 Amount forward			$39,048 29
J. Klaes	3727	Nov. 28, '76	28 50
M. O. Rourke	"	" "	65
Jno. Riddell	"	" "	39
Ned Kelly	"	" "	39
Jno. Burns	"	" "	39
P. McCormack	"	" "	30
C. Scully	"	" "	38 25
S. Moulton	"	" "	39
W. Lyons	"	" "	39
P. Driscoll	"	" "	39
M. McCarty	"	" "	34 50
P. Ward	"	" "	39
P. Mooney	"	" "	39
L. Gaffney	"	" "	39
W. Weeley	"	" "	39
J. Baltwood	"	" "	39
M. Donellan	"	" "	39
D. Murphy	"	" "	39
M. Turn	"	" "	39
L. Clare	"	" "	39
T. Angelo	"	" "	39
T. L. Hotes	"	" "	30
J. Leonard	"	" "	39
J. Petrie	"	" "	33
E. Demphey	"	" "	40 50
R. Hasean	"	" "	39
M. Crow	"	" "	39
J. Flynn	"	" "	46 50
J. Birmingham	"	" "	39
Ed. Orr	"	" "	39
Ed. Conners	"	" "	39
W. Spellman	"	" "	39
D. Wharton	"	" "	39
W. Tobin	"	" "	39
Jno. Schell	"	" "	39
J. Dowaey	"	" "	39
E. Ryan	"	" "	25 50
Jno. Eagan	"	" "	39
T. McDermott	"	" "	39
J. Roach	"	" "	39
			$40,590 04
40 Amount forward			$40,590 04
J. Brady	3727	Nov. 28, '76	39
H. McIntyre	"	" "	39
P. Bermingham	"	" "	28 50
D. Celander	"	" "	15
H. Albert	"	" "	12
P. A. McIntyre	"	" "	78
J. Brady	"	" "	52
O. W. Long	"	" "	52
Wm. Brooks	"	" "	52
Jas. Crowley	"	" "	51
do	"	" "	51
T. Hewes	"	" "	39
Geo. Cronan	"	" "	75
T. Mannon	"	" "	52
A. Connell	"	" "	52
J. Barry	"	" "	36 75
J. O'Conner	"	" "	39
P. Green	"	" "	71 25
Mrs. Laporte	"	" "	71 25
Anna White	"	" "	60
Mrs. C Twoney	"	" "	65
Wm. Blake	"	" "	65
Mrs. Doyle	"	" "	47 50
Mrs. McKinley	"	" "	65
Mrs. McGann	"	" "	65
F. C. Farrell	"	" "	154
Mrs. McGunn	"	" "	65
M. Doody	"	" "	60
Mrs. Quinn	"	" "	47 50
Mrs. Johnson	"	" "	47 50
T. Rice	"	" "	47 50
J. Rizzie	"	" "	45

Exhibit A.—Filed with petition November 4th, 1882[1]—Continued.

To whom due.	Ordinance.	Date.	Amount.
H. Nevitt	"	" "	28 50
V. F Flotte	"	" "	45
J. Isabel	"	" "	45
D Turner	"	" "	45
P. Henninger	"	" "	45
J. Underhill	"	" "	45
F. Brand	"	" "	45
P. Dwyer	"	" "	45
41 Amount forward			$42,673 29
Ed. Hughes	3727	Nov. 28, '76	34 50
P. Suter	"	" "	45
C. Miller	"	" "	36
G. Graham	"	" "	45
E. Askins	"	" "	20
H. Nelson	"	" "	16 50
T. Doherty	"	" "	10 50
J. Cloney	"	" "	45
H. Jennings	"	" "	39
Mrs. Buckley	"	" "	65
A. Kern	"	" "	46 50
D. Shaw	"	" "	46 50
P. Engelhardt	"	" "	46 50
T. Flannery	"	" "	46 50
J. Pensen	"	" "	46 50
M. Ridge	"	" "	46 50
Mrs. Cassidy	"	" "	71 25
Mrs. Curley	"	" "	71 25
Thos. Davis	"	" "	46 50
Mrs. Gill	"	" "	65
Mrs. Ward	"	" "	65
Mrs. Bacon	"	" "	71 25
Mrs. Barbe	"	" "	77 50
C. McCarthy	"	" "	54 25
Jno. Rogers	"	" "	54 25
N. Brown	"	" "	52
J. Hayes	"	" "	39
D. Maher	"	" "	39
N. Mundy	"	" "	39
J. Stack	"	" "	30
Jno. Monroe	"	" "	20 25
Mrs McGary	"	" "	48
Ed. Flood	"	" "	53 25
M. McDonald	"	" "	38
L Blessing	"	" "	38
T. Henrey	"	" "	28
Carried forward			$44,310 04
42 Firemen's Char't'ble Ass'n, 5th dist	1792	Oct. 9, '72	200
Fire companies, 5th dist	1435	July '72	600
Firemen's Char ble Ass'n, 5th dist	1841	Nov. "	200
Fire department, 5th dist	1510	May "	200
Firemen's Char. Ass'n, 5th dist	1582	June "	200
Do. do. do.	1628	July "	200
Sun Mutual Ins. Company	3611	Aug. 22, '76	5,515
J. Burgerman	2872	Dec. 8, '74	50
T. Hasam	3332	" 14, '75	162
R. De Verges	3557	Feb'y 1, '76	27
J. Kennedy	2844	Nov. 17, '74	12
E. Fasball	2747	Sept. 8, '74	39
J. Magraw	2289	" 2, '73	49
Total			$7,454

RECAPITULATION OF SCHEDULES.

No. 1	$59,931 69
No. 2	10,373 85
No. 3	44,310 04
No. 4	7,454
Total	$122,069 58

(Endorsed:) No. 4414. Civil district court, parish of Orleans. Judah Hart vs. City of New Orleans. Exhibit A. Filed Nov. 4th, 1881. (Signed) Alex. T. Donovan, d'y cl'k.

43 Civil district court, parish of Orleans.

JUDAH HART
vs.
CITY OF NEW ORLEANS. } No. 4414.

To the honorable the judges of said court:

Your petitioner, Judah Hart, respectfully shows that he is plaintiff in the foregoing entitled suit, and that the same was by him commenced on or about the day of November, 1881, in said civil district court; that your petitioner was at the time of bringing said suit and is now a citizen of the State of New York and a resident thereof.

Your petitioner further shows that there is and was at the time said suit was brought a controversy therein between your petitioner and the said defendant, The City of New Orleans, who is a citizen of the State of Louisiana and a resident thereof; that said action was brought by your petitioner for the purpose of recovering certain large sums of money from the said defendant, and that the matter in dispute in this suit exceeds
44 the sum of five hundred dollars exclusive of interest and costs.

Your petitioner further represents that this suit has not been tried, but is now pending in the said "civil district court for the parish of Orleans," and that your petitioner desires to remove the same into the circuit court of the United States for the fifth circuit and eastern district of Louisiana, in pursuance of the act of Congress in that behalf provided, to wit, the Revised Statutes of the United States, section 639, subdivision 3. Your petitioner further says that he has filed the affidavit required by the statute in such cases and offers herewith his bond, executed by M. J. Hart of this city, as surety, in the penal sum of two hundred and fifty dollars, conditioned as by said acts of Congress required.

Your petitioner therefore prays that said bond may be accepted as good and sufficient according to the said act of Congress, and that the said suit may be removed into the next circuit court of the United
45 States in and for the said eastern district of Louisiana, pursuant to the aforesaid act of Congress in such cases made and provided, and that no further proceedings may be had therein in this court.

(Signed) E. H. FARRAR,
A. G. BRICE,
Att'ys for Pl'ff.

Affidavit.

STATE OF NEW YORK,
County of New York:

Personally appeared before me, the undersigned commissioner of the State of Louisiana in and for the city and State of New York, duly commissioned and qualified, Judah Hart, who, being duly sworn, deposes and says that he is the plaintiff in the case of Judah Hart vs. The City of New Orleans, No. 4414, civil district court, parish of Orleans, State of Louisiana, and that he has reason to believe and does believe that from

prejudice and local influence he will not be able to obtain justice in said State court.

(Signed) JUDAH HART.

46 Sworn to and subscribed before me this 25th day of October, A. D. 1881.

[SEAL.] (Signed) GEO. R. JAQUES,
Commissioner of Deeds for the State of Louisiana, in New York, 252 Broadway.

Stamps to the value of fifty-five cents affixed and duly cancelled.

(Endorsed:) No. 4414. Civil district court, parish of Orleans. Judah Hart vs. City of New Orleans. Petition and affidavit for removal of cause. Filed Nov. 5, '81. (Signed) A. T. Donovan, d'y cl'k. (Signed) E. H. Farrar, A. G. Brice, att'ys.

Order.

The within petition and affidavit and the accompanying bond being considered let this cause be transferred to the circuit court of the United States for the eastern district of Louisiana, at its term next to be holden, and let no further proceedings take place herein in this court.

New Orleans Nov. 5th, 1881.

(Signed) N. H. RIGHTOR,
Judge.

47 *Bond.*

Know all men by these presents that we, Judah Hart, as principal, and Maurice J. Hart, as surety, are hereby held and firmly bound unto the City of New Orleans in the penal sum of two hundred and fifty dollars, lawful money of the United States, for the payment of which well and truly to be made we bind ourselves, jointly and severally, firmly by these presents.

The condition of this obligation is such that if Judah Hart shall enter and file in the next circuit court of the U. S. in and for the eastern district of Louisiana, on the first day of its session, copies of all process, pleadings, depositions, etc., and other proceedings in the above styled and numbered suit, and shall do such other appropriate acts as are required by law to be done upon the removal of said suit from the said civil district court to the said U. S. circuit court, then this obligation to be void; otherwise of force.

(Signed) JUDAH HART,
P. p. E. H. FARRAR, *Att'y.*

(Signed) MAURICE J. HART.

48 Stamps affixed to value of thirty cents.

(Endorsed:) No. 4414. Civil district court, parish of Orleans. Judah Hart vs. City of New Orleans. Bond for removal. Filed Nov. 5, '81. (Signed) A. T. Donovan, d'y cl'k.

Certificate.

I, James T. Clark, clerk of the civil district court in and for the parish of Orleans, do hereby certify that the foregoing 46 pages do contain a true and correct transcript of the pleadings and of all documents filed and evidence adduced in the said civil district court in case No. 4414 of the docket thereof, wherein Judah Hart is plaintiff and the City of New Orleans is defendant.

[SEAL.] (Signed) JAS. T. CLARK, *Clerk.*

49 PROCEEDINGS IN U. S. CIRCUIT COURT, FIFTH CIRCUIT AND EASTERN DISTRICT OF LOUISIANA.

Default.—Extract from the minutes, November term, 1881.

NEW ORLEANS, *Tuesday, Nov. 15th,* 1881.

Court met pursuant to adjournment. Present, Hon. Don A. Pardee, circuit judge.

JUDAH HART
vs.
CITY OF NEW ORLEANS. } No. 9662.

On motion of E. H. Farrar, attorney for the plaintiff herein, and on showing to the court that the City of New Orleans, defendant, has failed to answer the petition in this case although duly cited:

Ordered, that judgment by default be entered against said defendant.

Rule to set aside default.—Filed November 15th, 1881.

On motion of C. F. Buck, city att'y, reserving all means of exception and defence, it is ordered that plaintiff show cause on Mon-
50 day, the 21st day of November, 1881, at 11 a. m. why the judgment by default herein entered on the 15th day of Nov., 1881, should not be set aside and quashed as absolutely null and void, and the cause remanded to the State court for the following reasons:

First. That no citation ever issued from this hon. court commanding the defendant to appear and plead or answer plaintiff's demand.

Second. That order or pretended order of removal from an alleged cause pending between plaintiffs and defendant to this hon. court from the civil dist. court is null and void, and vested this hon. court with no authority or power in the cause for the reasons:

That the said order was granted on the day following the filing of this suit in said civil dist. court, and before the delays allowed by law to appear and plead or answer had expired, and there was not at the time such contestatis litis, issue joined, or suit pending between parties remov-
51 able for any cause under the acts of Congress, and especially under the sec. 639 R. Statutes, subdivision 3, &c. That this (said) cause is not in any event removable under acts of Congress to this hon. court.

Third. That the affidavit is untrue; that on the face of the papers it is physically and legally impossible that petitioner could have on his mind any reasonable belief that from prejudice and local influence "he will not be

able to obtain justice in said State court," because the petition presents merely a question of alleged indebtedness reversable by the supreme court of the State on the law and the facts.

c. That the civil dist. court acted without legal affidavit; that the pretented affidavit was sworn to by the plaintiff in the city of New York on the 25th day of Oct., 1881, and the suit filed on the 4th of Nov., 1881, and said affiant swears therein that he is plaintiff in suit No. 4414 civil dist. court, a suit filed ten days after the taking of the affidavit.

52 Fourth. That on the face of the record this honorable court is without jurisdiction ratione materia.

And it is ordered that defendant be dispensed from pleading or answering herein until final disposition of this rule.

Service accepted.

(Signed) E. H. FARRAR, *Att'y.*

53 *Order rule to remand dismissed, and time allowed to answer.—Extract from minutes of November 21st, 1881.*

JUDAH HART
vs.
CITY OF NEW ORLEANS. } No. 9662.

The rule to set aside default and remand this cause to the State court came on this day to be heard, and was argued by counsel. On consideration whereof it was ordered that said rule be dismissed, and that it have one week' time to answer the petition herein.

Motion and order setting aside default.—Extract from the minutes of November 28th, 1881.

JUDAH HART.
vs.
CITY OF NEW ORLEANS. } No. 9662.

On motion of C. F. Buck, city attorney, and Wynne Rogers, of counsel, it is ordered that the default herein taken be set aside and the plea to the jurisdiction of this court permitted to be filed.

54 *Motion and order rescinding order setting aside default.—Extract from minutes of November 28th, 1882.*

JUDAH HART
vs.
CITY OF NEW ORLEANS. } No. 9662.

On motion of E. H. Farrar, of counsel for plaintiff, and on suggesting to the court that on the opening of the court this day the court inadvertently allowed a default to be set aside and a plea filed in violation of rule III of this court, it is ordered that said plea be stricken from the files, and the order setting aside the default be rescinded, and the said default be reinstated as if never set aside, and that the defendant be notified of this order.

Motion and order, default set aside.—Extract from the minutes of November 30th, 1882.

JUDAH HART
vs.
CITY OF NEW ORLEANS. } No. 9662.

55 This day in open court came C. F. Buck, city att'y, and in presence of E. H. Farrar, the counsel for the plaintiff herein, moved the court to set aside the default heretofore entered in this court, and for leave to file his plea to jurisdiction.

And after hearing counsel it is ordered that the default herein entered be set aside, and the defendant be allowed to file his plea to the jurisdiction, all of plaintiff's rights in the premises being reserved.

Plea to the jurisdiction.—Filed November 30th, 1881.

To the hon. the judges of the circuit court of the United States for the fifth circuit and eastern district of La.

JUDAH HART
vs.
CITY OF NEW ORLEANS. } No. 9662.

And now comes the defendant, reserving all rights under the motion hereinbefore made to remand this cause to the civil dist. court for the parish of Orleans, for the sole purpose of excepting to the juris-
56 diction of this hon. court, and for cause says:

That she is informed, believes, and so charges that Judah Hart, plaintiff herein, is not the true holder and owner of the claims herein declared upon, but same are held and owned by divers other persons, citizens of the State of Louisiana, whose names are not known to appearer; that said claims declared upon (if legally due and owing, which is not admitted) are each and every one of them previously due to the persons in whose favor the alleged ordinances were passed; that said claims are now negotiable and transferable only by express contract of assignment, and confer no greater rights on the assignee than those engaged by the original payee, all of whom were and are citizens of the State of La. And this appearer specially avers that the said alleged title of plaintiff thereto is colorable & not real. And defendant further shows and avers that pursuant to the terms of ordinance No. 6968, adopted by the city council on April 7th, 1881, certificates of the character therein provided for
57 were issued by the proper officers for each and every one of the ordinance claims detailed in Exhibit A, annexed to plaintiff's petition specifically and identifiable therewith; that such certificates, a form or copy of which, together with the said ordinance No. 6968 printed thereon, marked B, is filed herewith as part hereof, were issued as aforesaid, and are held by the terms and form thereof to be evidence of ownership in the possession of the claim or claims of the original payees of said ordinances.

That in other respects said certificates in no manner impair or improve the rights or obligations of the original parties.

Respondent avers that inasmuch as plaintiff has not alleged that he is holder of said certificates, or if as a fact it shall appear that he is not in possession thereof, he has no right of action in the premises, and cannot maintain this suit.

And if plaintiff should be now in possession at the institution of
58 this suit, as to which this appearer can make neither ad or denial, because the existence of such certificates is wholly ignored in his petition, then she, this appearer, again and specially denies that plaintiff holds them as evidences of ownership in himself, or of the claims of which they purport to be evidences of transfer, but avers on the contrary that he holds them as a interposed person, without interest therein, for the use and benefit of the real owners as aforesaid, who are citizens of the State of La., and who, as respondent verily believes and avers, have placed their claims in the possession, name, and control of petitioner, a citizen of the State of New York, for the sole purpose of giving to and investing this hon. court with jurisdiction by means of removal from the State court on his affidavit that, through prejudice or local influence, he had reason to believe, and does believe, that justice would not be done him by the State courts.

Wherefore respondent prays that this plea and exception to the
59 jurisdiction of this hon. court be maintained, and plaintiff's suit dismissed, and for general relief, etc.

(Signed) C. F. BUCK,
City Att'y.

Do. WYNNE ROGERS, *Of* .

The undersigned Jos. A. Shakespear, mayor of the city of New Orleans, being duly sworn, deposes and says that the facts and matters contained in the foregoing plea are true to the best of his knowledge and belief.

(Signed) JOS. A. SHAKSPEARE, *Mayor.*

Sworn to before me this Nov. 30, '81.

[SEAL.] (Signed) W. O. HART, *Not. Pub.*

Exhibit B, referred to and made part of foregoing.

No. . Certificate of appropriation issued under ordinance 6968, A. S.

NEW ORLEANS, , 188 .

This is to certify that under ordinance No. , administration series, adopted , 187 , the sum of dollars has been appro-
60 priated to for and the said party, or the bearer hereof, will, upon the surrender of this certificate (and not otherwise), be entitled in the order of the adoption of said ordinance to receive a cash warrant on the department of finance on any funds in the treasury not otherwise appropriated; this certificate bears no interest, but is receivable for taxes of 1878, and previous years as provided by law.

Mayor. Administrator of Public Accounts.

(On margin:) Department of public accounts.

MAYORALTY OF NEW ORLEANS,
City Hall, April 7, 1881.

(No. 6968. Administration series.)

An ordinance to provide for the issue of certificates of appropriation.

SECTION 1. Be it ordained by the council of the city of New Orleans, That any creditor of the city to whom an appropriation has been made, but in whose favor the administrator of public accounts cannot draw a warrant until there be moneys in the treasury, shall be entitled to
61 demand and receive a transferable certificate entitling said creditor or bearer to receive a cash warrant for the amount due in the order of the adoption of the ordinance authorizing the same.

SEC. 2. Be it further ordained, &c., That said creditor shall sign a receipt therefor, stipulating that the warrant shall be claimed only on the production and surrender of this certificate, and accepting the provisions of this ordinance.

SEC. 3. Be it further ordained, That warrants shall be issued strictly in the order of the adoption of the ordinance authorizing them.

SEC. 4. Be it further ordained, That certificates issued under this ordinance shall be receivable in settlement of taxes of 1878, and previous years, as provided by law.

Adopted by the council of the city of New Orleans, April 5th, 1881.
Yeas: Delamore, Fagan, Fitzpatrick, Guillotte, Huger, Mealey, Walshe.

JOS. A. SHAKSPEARE, *Mayor.*

A true copy.

M. McNAMARA, *Secretary.*

62 *Answer.—Filed November 30th*, 1881.

JUDAH HART
vs.
CITY OF NEW ORLEANS. } No. 9662.

To the hon. the judges of the circuit court of the United States for the fifth circuit, and eastern district of La.:

And now, reserving her rights under the motion to remand to the State court heretofore made for insufficiency, and informality of the affidavit on which the order of removal was granted, and the special plea to the jurisdiction of this hon. court hereinbefore filed, the defendant, through undersigned counsel, for answer to plaintiff's petition denies all and singular the allegations therein contained, except as may be specially admitted; respondent admits the correctness of list of ordinances contained in Exhibit A, filed as part of plaintiff's petition, except, 1st, one item, J. Hassam, $162, which appears twice in said exhibit; and 2d item, C. A. , #1663, $513.44, should be $313.44; but specially denies that said ordinances are evidences

of indebtedness or claims against her, or acknowledgment of in-
63 debtedness reducible to judgment, as will be more fully set forth hereinafter.

And respondent specially denies that the alleged original payees, or their assigns, have ever transferred their rights and claims under said ordinances to plaintiff herein, and the alleged ownership of and assignment to plaintiff are denied and strict proof thereof required.

And respondent avers further, that pursuant to the terms and provisions of ordinance No. 6968, A. S., passed April 7th, 1881, certificates of the character therein provided were issued by the proper officers for each and every one of the ordinance claims detailed in Exhibit A, annexed to plaintiff's petition; that such certificates, a form or copy of which, together with said ordinance printed thereon, No. 6968, marked B, are filed herewith as part of this answer, were issued to be regarded as evidence of ownership of the claim of the original beneficiary of ordinance, and for the benefit of such payees to facilitate the sale or transfer of their rights under said ordinances, but without in any manner changing, impairing,
64 or improving the rights of the original parties.

Respondent avers, therefore, that inasmuch as plaintiff has failed to allege that he is in possession of said certificates as evidences of ownership of the claims sued on that he has no right of action in the premises.

And if plaintiff should be holder and possessor of said certificates, as to which appearer can make no admission or denial, then she, this defendant, again denies that he is owner thereof, or in possession in his own name as evidences of title in himself, but holds them as an interposed person for the use and benefit of the real owners, who, this appearer verily believes, are citizens of the State of Louisiana, who placed their claims in the possession, name, and control of petitioner as a citizen of the State of New York for the sole purpose of giving and investing this hon. court jurisdiction through means of removal from the State court, on the affidavits of said plaintiff that through prejudice or local influence he could not get justice
65 in said State court; and defendant denies that said Judah Hart has any interest in the subject-matter of this suit.

But if it should appear that said Judah Hart, plaintiff, is actual bona fide owner as assignee of the interest of original payees of the respect' ordinances, respondent for further answer pleads and avers that no absolute judgement can be rendered against her herein on the said pretended claims, for the reason that she, The City of New Orleans, defendant herein, has exhausted all her powers and performed all her obligations in the premises which the law confers or imposes upon her; that said ordinances are not acknowledgments of or contracts creating indebtedness, but merely appropriations pro tanto of the revenues of the respective years for the benefit of the payee, and said payee has no rights by virtue either of the original contract of service or sale of material, or of whatever source his claim may be under the ordinances, than to be paid out of said revenues which are by said ordinances so appropriated.

That respondent, a municipal corporation, has no power or
66 authority to create debt or incur obligations, except as same is specially conferred by the legislature, and all parties must be held to have contracted with her with full understanding of her limited powers, and are bound thereby.

That for each of the years from 1871 to 1878, inclusive, the taxing power of the city of New Orleans for "general purposes," meaning as a source of revenue to provide the means for defraying the ordinary expenses of government, in which all of plaintiff's alleged claims are embraced, was exercised to the full limit, and appropriations made against the entire expected revenue; that the limit placed on the taxing power of the city of New Orleans, fixed bythe act of March , 1870, act No. 7, E. S., and subsequently by act No. 73, acts of 1872, was equivalent to a limit upon her capacity to create or make and incur indebtedness, and all appropriations in excess of *still* revenue are wholly null and void, and ordinances appro-
67 priating moneys to the extent of actual revenue confer no other right on the payee than that of being paid in due course, according to the mode directed by law, out of the revenues as collected, and not otherwise.

That this limitation is a part of the contract between the city and the payee, and is binding upon the latter.

And respondent further shows that for further certainty to limit the city, and for 'the' purposes, a constitutional amendment was proposed in the session of the general assembly of La. of the year 1874, duly passed, submitted to a vote of the people of the State, and by them approved and adopted, by which it was provided that, among other things, "the city of New Orleans shall not hereafter increase her debt in any manner or form or under any pretext."

And subsequently, in 1877, act No. 30 of the acts of the general assembly of La. of said session, 1877, was passed, in more express terms limiting the power of all municipal corporations in the administration of their affairs to appropriation of actual revenues.

Respondent avers that in every one of said years from 1871 to
68 1878, inclusive, but more especially in the years of 1875, 1876, 1877, and 1878, in the last two of which the taxing power was limited for general purposes to 10 mills, the respective councils have, in violation of law, made appropriations of the character and for the purposes of those herein declared on, in excess of possible revenue derived or to be derived from the exercise of the full taxing power, which are wholly null and void, as in violation of said constitutional amendment.

And respondent avers, whether the city authorities have or have not exceeded their authority, and under any and all conditions, plaintiff's claims (if he be owner of the claims declared on) cannot be converted into judgment, because the sole and only right of holders of such claims is to be paid out of the revenues of the year in which the ordinance is passed.

And finally, respondent avers that such as aforesaid is the construction placed upon the rights of payees of ordinances or claims as those herein declared on by the supreme court of the State of Louisiana in the
69 case of The New Orleans Tax-payers' Association vs. The City of New Orleans, wherein it was explicitly held that the ordinance debt, that is, the appropriations of moneys, or rights of payees thereunder, did not constitute a valid and absolute indebtedness; that the holders of such claims had no other rights than to be paid out of revenues accruing to the credit of such claims, and that the obligations of the city of New Orleans are those of a trustee to apply the revenues as collected to the payment of appropriations against them.

Wherefore respondent prays that plaintiff's suit be dismissed, or, if any judgment be rendered against her, that it be to the extent only of recognizing the rights of plaintiff under the ordinances declared on to be paid out of the revenues of the respective years, as the law directs; and she prays for general relief, and as in duty bound, etc.

(Signed) C. F. BUCK, *City Att'y.*
WYNNE ROGERS, *Of Counsel.*

70 (Exhibit B, certificates and ordinance No. 6968, made part of foregoing answer, transcribed after plea to jurisdiction, pages of this transcript.)

Order—Case to be reassigned—Extract from minutes of January 24th, 1882.

JUDAH HART
vs. } No. 9662.
CITY OF NEW ORLEANS.

Upon due cause shown, it is ordered by the court that this cause go over, to be reassigned at the next assignment of causes.

Hearing and continuance—Extract from minutes of February 14th, 1882.

JUDAH HART
vs. } No. 9662.
CITY OF NEW ORLEANS.

This cause came on for trial—A. G. Brice, E. H. Farrar, and S. P. Blanc for plaintiff; C. F. Buck, city att'y, for defendant—when the fol-
71 lowing-named jurors were called, and sworn to well and truly try the issue joined herein: (1) F. L. Fisher, (2) R. Beltram, (3) Henry Barbe, (4) J. W. Homan, (5) U. M. Lartigue, (6) L. E. Snowden, (7) Jno. Leahey, (8) Chas. Elgerd, (9) E. B. Walker, (10) T. F. Patton, (11) E. Sousseye, (12) E. R. Bohler.

Whereupon the cause was considered opened and continued until to-morrow at 11 a. m.

Hearing and and *verdict on the plea to jurisdiction.—Extract from the minutes of February 15th, 1882.*

JUDAH HART
vs. } No. 9662.
CITY OF NEW ORLEANS.

This cause, as continued from yesterday, came on for hearing, and the said counsel for the parties, respectively, as well as the said jurors impanneled in the cause being all present, upon the motion of counsel for plaintiff the denfendant's plea to jurisdiction was taken up, and after hearing the evi-
dence and argument of counsel, and receiving a charge from the
72 court, the matter was submitted to the jury, E. R. Boehler being appointed foreman thereof. And thereupon the said jurors did

then and there in open court, through their said foreman, render and deliver the following verdict, viz:

We, the jury, find against the defendant on the plea to the jurisdiction. N. O. Feb'ry 15, 1882.

(Signed) E. R. BOEHLER, *Foreman.*

Whereupon it was ordered that the said verdict be recorded, and it is done accordingly.

And thereupon the trial of the cause on the merits was proceeded with, and after hearing the pleadings, evidence, and argument in part it was ordered by the court that the cause stand over until to-morrow at 10 o'clock a. m.

Verdict.—Extract from the minutes of February 16th, 1882.

JUDAH HART
vs.
CITY OF NEW ORLEANS.

73 This cause, continued from yesterday, came on this day to be further heard, and the said counsel for the respective parties as well as the said jurors in the cause being all present the trial was proceeded with.

And after hearing further argument and receiving a charge from the court, E. R. Boehler was appointed foreman of the jury, and they retired to deliberate on their verdict. After due deliberation the said jurors returned into court, and then and there through their said foreman delivered the following verdict, to wit:

NEW ORLEANS, *February 16th*, 1882.

We, the jury, find for the plaintiff in the amount of one hundred and twenty-one thousand six hundred and ninety-seven dollars and eighteen cents.

(Signed) E. R. BOEHLER, *Foreman.*

Whereupon it was ordered that the said verdict be recorded, and it is done accordingly.

Rule for new trial.—Filed February 18th, 1882.

On motion of C. F. Buck, city att'y, and Wynne Rogers, of
74 counsel, it is ordered that plaintiff show cause on the 3d day of March, 1882, at 11 a. m., why the verdict of the jury and the judgment herein entered should not be set aside and a new trial granted for the reasons, to wit:

That said verdict and judgment are clearly contrary to the law and the evidence particularly in this:

1st. The court charge the jury that if they were satisfied that the appropriation or ordinances sued on were made within the estimate of receipts, that is, if the appropriation for any year were within the estimate of receipts as per the budget of such year, that then the plaintiff was entitled to an absolute judgment against the defendant.

2d. That said charge was not only erroneous in law, but not warranted by the evidence and tended to mislead the jury.

3d. Even if said charge was correct in law, there was absolutely no evidence before the court to show that such appropriations were within budget estimates.

4. The court erred in refusing to charge the jury that the plaintiff
75 could acquire by the judgment of the court no greater rights than the ordinances themselves conferred on him, which are that said ordinances are appropriations against the general revenues of the city derived from taxation on the property of the inhabitants of the city for each respective year; that said revenue is the exclusive source or fund out of which said ordinances can be paid.

5th. That the court erred in refusing to charge that this limitation should have been contained and expressed in the verdict and judgment.

6th. The court erred in refusing to charge that the power of taxation granted by legislature for general purposes limits the power to make appropriations to that extent, and the plaintiff has no other claim to payment than against the revenues derived from the exercise of the taxing power to the full extent authorized by law, at the time the appropriation is made.

7th. That the court erred especially in refusing to charge that as to the ordinances passed since the constitutional amendment of 1874 has
76 gone into operation the restriction of the city's liability to disbursement of actual revenues should be maintained and contained in the judgment.

Remittitur.—Filed March 3d, 1882.

U. S. circuit court, eastern dist. of La.

JUDAH HART
vs.
CITY OF NEW ORLEANS. } No. 9662.

Now comes the plaintiff and for the purpose of avoiding discussion and controversy between himself and defendant as to a question raised upon the motion for a new trial, prays the court to enter as in the nature of a remittitur the following proviso in the judgment to be entered upon the verdict herein rendered, to wit:

"It is further ordered, adjudged, and decreed by virtue of the acquies-'ence of the plaintiff, and by his consent, in the nature of a remittitur, and for the purpose of avoiding a question raised on the motion for a new trial, that in case said plaintiff shall hereafter apply for a mandamus to compel the levy of taxes to pay the said amount herein decreed,
77 or any part thereof, he shall be held bound by all the limitations, if any, as to the extent of the taxing power of the said defendant which were in force at the time the contracts herein sued upon were made between the city and transferrors of the plaintiff, i. e., that the plaintiff shall not have the right by mandamus to compel the levy and collection of, in any one year, at a greater rate than that which was binding upon the defendant at the time the said contracts were made.

(Signed) A. G. BRICE,
E. H. FARRAR,
Att'ys for Pl'ff.

And thereupon the court discharged the motion for a new trial.

Judgment.—Extract from judgment book, November term, 1881.

NEW ORLEANS, *Friday, March 3d,* 1882.

Court met pursuant to adjournment. Present, Hon. Don A. Wardee, circuit judge.

JUDAH HART
vs.
CITY OF NEW ORLEANS. } No. 9662.

78 By reason of the verdict of the jury herein, and in accordance therewith, it is ordered, adjudged, and decreed that the defendant's plea to the jurisdiction of the court be overruled, and that the plaintiff, Judah Hart, do have and recover of and from the defendant, The City of New Orleans, a municipal corporation, organized under the laws of the State of Lonisiana, the sum of one hundred and twenty-one thousand six hundred and ninety-seven $\frac{18}{100}$ dollars, with five per cent. per annum interest thereon from the date hereof until paid, and costs of suit.

It is further ordered, adjudged, and decreed, by virtue of the acquiesence of the plaintiff and by his consent, in the nature of a remittitur, for the purpose of avoiding a question raised on the motion for a new trial, that in case said plaintiff shall hereafter apply for a mandamus to compel the levy of taxes to pay the said amount herein decreed, or any part
79 thereof, he shall be held bound by all the limitations, if any, as to the extent of the taxing power of the said defendant which were in force at the time the contracts herein sued upon were made between the city and the transferrors of the plaintiff, i. e., that the plaintiff shall not have the right by mandamus to compel the levy and collection of taxes in any one year at a greater rate than that which was binding upon the defendant at the time the said contracts were made.

Judgment rendered March 3d, 1882.
Judgment signed March 4th, 1882.
(Signed) DON A. PARDEE, *Judge.*

Bills of exceptions.—Filed March 14th, 1882.

U. S. circuit court.

JUDAH HART
vs.
CITY OF NEW ORLEANS. } No. 9662.

Be it remembered that at the trial of this cause, the same being in progress before a jury, and being about to be submitted to the jury on
80 the evidence adduced and the admissions contained in the pleadings, and the charge of the court, it being admitted in the answer of the defendant that services were rendered and materials, supplies, etc., furnished, as detailed in exhibit annexed to plaintiff's petition, and that ordinances had been passed by the municipal government appropriating for the payment of the respective claims during the various years out of cur-

rent revenues according to law amounts sufficient to pay them, which ordinances are so payable out of such revenues in due course of administration of the affairs of the city. Upon which counsel for the defendant asked the court to charge as matter of law, arising from the provisions of the city charter, to wit, act No. 7, acts of 1870, E. S., and of act No. 73, acts of 1872, and act No. 30, acts of 1876; which said acts were specially offered in evidence, and are made part of this bill of exceptions.

(An agreement as to the above-described acts, &c., has been filed, and is transcribed on page of this transcript.)

81 That by the nature and legal effect of their respective contracts the original holders of such claims sued on, and their transferee, the plaintiff, acquired no other right against the city than to be paid out of current revenues of the year in which such claim arose, and that by the adoption of the ordinances appropriating such revenues and directing payment accordingly, The City of New Orleans has complied with her obligations in the premises, and the verdict or judgment, if any be found against her, should be as prayed in her answer, that plaintiff's claim and rights under such ordinances be recognized and made payable out of such current funds and revenues, and in no other manner; which charge so requested the court refused to give, and instead thereof charged the jury that for the years 1871 to 1875, inclusive, no limitation existed or could be deduced from the law on the power of the city of New Orleans; that her contracts for the purposes described in the pleadings were absolute; and if in other respects they, the jury, found that the plaintiff was entitled to

82 recover he should have an absolute and unconditional judgment against the city, recognizing and fixing an absolute and unconditional debt. To which refusal to charge as asked, and to which charge as given, defendant excepted; and as these matters do not appear fully of record, makes this bill of exception and prays the court to approve same.

(Signed) DON A. PARDEE, *Judge*.

Bill of exception II.

Be it remembered in the above-entitled cause, the same being progress of trial, as stated in the foregoing bill of exception I, upon the same statement of issues, facts, evidence, and law, and upon the further fact proven on the trial that the whole aggregate debt of the city of New Orleans had been constantly decreased year by year from January 1, 1875, to the time of the trial of this case, counsel for defendant especially asked the

83 court to charge the jury under and in accordance with the provisions of the acts recited in the bill of exceptions I, and of an amend'ent to the constitution of the State of Louisiana, duly adopted, and which became operative upon the city of New Orleans on and after the 1st day of January, 1875, offered in evidence, made part hereof, and which is to the following effect:

"ART. . The city of New Orleans shall not hereafter increase her debt in manner or form, or under any pretext; after the 1st day of January, 1875, no evidence of indebtedness or warrant for payment of money shall be issued by any officer of said city except against cash actually in the treasury."

That as the city was prohibited from and after said 1st of January,

1875, from increasing her debt, the claims held by plaintiff accruing since said date did not constitute a valid indebtedness of the city, absolute and unconditional, but only claims against revenues looking for payment solely and exclusively to said revenues, and the holders of such claims
84 had acquired no greater right against the city than to demand the appropriation of the revenues of said city for each year to the payment of the claims of such year.

Which charge, substantially, the court gave, but with the addition and modification that inasmuch as the city council, under existing laws, is bound annually to make an estimate of receipts and expenditures in advance for such years, the estimates thus made are conclusive, and if the jury find that the appropriations, ordinances, or claims sued on by plaintiff, or all ordinances for the year, are within the estimate of receipts and expenditures thus made, the plaintiff is entitled to an absolute and unconditional judgment.

To which charge as thus given defendant excepted, and as this does not appear of record, files this bill of exceptions, and prays the court to sign the same.

(Signed) DON A. PARDEE, *Judge.*

85 *Petition and order for writ of error.—Filed March 14th,* 1882.

JUDAH HART
vs.
THE CITY OF NEW ORLEANS.

To the hon. the judges of the circuit court of the United States, 5th circuit and eastern district of La.:

The petition of The City of New Orleans, defendant herein, with respect shows that she is aggrieved by the verdict of the jury, and final judgment herein rendered against her on the 3d of March, signed on the 4th of March, 1882, condemning her to pay plaintiff the sum of one hundred and twenty-one thousand six hundred and ninety-seven $\frac{18}{100}$ dollars ($121,697.18); that she is informed and believes that there is error to her prejudice in said judgment, and she is desirous of having and presenting a writ of error therefrom to the hon. the Supreme Court of the United States.

That she is unable to furnish bond in sufficient amount to make such writ operate as a supersedeas.

Wherefore she prays that on her giving bond in an amount sufficient
86 to cover costs, to be fixed by the court, a writ of error be allowed herein, without supersedeas, returnable to the hon. the Supreme Court of the United States, on the second Monday of October, 1882, and that Judah Hart be cited to answer said writ according to law; and she will ever pray, &c.

(Signed) C. F. BUCK,
City Att'y.
WYNNE ROGERS,
Of Counsel.

A writ of error is allowed herein as prayed for, returnable to the Supreme Court of the United States on the second Monday of October next, upon petitioner giving bond and sufficient surety in the sum of two hundred and fifty dollars, conditioned as the law directs.

March 14th, 1882.

(Signed) DON A. PARDEE, *Judge.*

87 *Supplemental petition and interrogatories.—Filed March 15th*, 1882.

JUDAH HART
vs.
CITY OF NEW ORLEANS.

To the honorable the judges of the circuit court of the United States for the fifth circuit and district of Louisiana:

The supplemental petition of Judah Hart respectfully showeth that, upon the judgment obtained in this case for the sum of one hundred and twenty-one thousand six hundred and twenty-seven $\frac{18}{100}$ dollars and costs, petitioner has issued a writ of fi. fa., and having reason to believe that the Canal and Claiborne Street Railroad Company, the Orleans Railroad Company, and the New Orleans Sugar Shed Company, corporations organized under the laws of the State of Louisiana, third persons, are indebted unto the said defendant in execution, or have property or effects in possession or under control belonging to the said debtor, or are indebted to said debtor, petitioner has caused the seizure to be made in the hands of said third persons.

88 Therefore petitioner prays that said Canal and Claiborne Street Railroad Company, said Orleans Railroad Company, and said New Orleans Sugar Shed Company be cited and ordered to answer, under oath, the annexed interrogatories, and, after due proceedings, condemned to pay the amount of said judgment and costs.

(Signed) A. G. BRICE,
E. H. FARRER,
Att'ys.

INTERROGATORIES.

1st interrogatory. Had you in your hands or under your control, directly or indirectly, at the time of the service in this case or since, or at the time of service of these interrogatories, or at any time since, or at the time of answering these interrogatories, any money, rights, credits, or other property whatsoever directly or indirectly belonging or due to the said defendant in execution, or in which it has or had any direct or indirect interest for the whole or for a part or otherwise; and, if yea, what is the nature, description, and amount thereof, and is the same not sufficient to pay or satisfy the full amount of said judgment and *and*
89 costs; and if less, to what amount? You being asked and required to make a full disclosure in relation to the same.

2d interrogatory. Were you not at the time of service of notice of seizure upon you in this case, or since then, or at the time of service of these interrogatories or since, or at the time of answering the same, di-

rectly or indirectly indebted or obligated unto the said defendant in execution for any sum whatever, whether for yourself alone or together with others, in consequence of any sale or exchange or transfer or assignment or payment *or payment* or novation or compensation or letting or hiring or service or labor or employment or affreightment or insurance or job or work or rent or interest or partnership or loan or deposit or trust or bailment or agency or suretyship or compromise or pledge, or in consequence of any contract or obligation whatever, whether the same be due or to become , and whether the interest of said defendant in execution be direct or indirect, or be for the whole or a part only, or whether it be
90 by bill, note, or otherwise; and, if yea, what is the nature, description, and amount thereof, and is the same not sufficient to pay or satisfy the full amount of said judgment and costs, or if less, what amount? You being asked and required to make a full and detailed disclosure in relation to the same.

3d interrogatory. Have you at any time since the service of notice of seizure in your hands herein made directly or indirectly unto or with the said defendant in execution any payment or novation or compromise or arrangement, or given it any note or other written obligation, or received from it directly or indirectly any receipts or acquittance, or received or acquired against it directly or indirectly any compensation or set-off or demand or note, or other obligation or right of action? And, if yea, state the nature, description, and amount thereof, and the time, place, and circumstances of the same.

Let the within supplemental petition be filed, and let the New Orleans Sugar Shed Company, the Canal and Claiborne Street Railroad
91 Company, and the Orleans Railroad Company be made garnishees herein and cited to answer the accompanying interrogatories under oath, in writing and as the law directs, as herein prayed for.

New Orleans, March 15th, 1882.

(Signed) DON A. PARDEE, *Judge.*

Citation to Canal and Claiborne Street Railroad Company.—Issued March 15th, 1882.

Circuit court of the United States, east dist. of La.

UNITED STATES OF AMERICA,
Eastern District of Louisiana:

JUDAH HART
vs.
CITY OF NEW ORLEANS. } No. 9662.

To the Canal and Claiborne Street Railway Company, garnishee:

You are hereby cited to declare on oath what property or effects belonging to the defendant in this case you have in your possession or under your control, or in what sum you are indebted to said defendant, and also to answer, in writing under oath, the interrogatories annexed to the petition of which a copy accompanies this citation, and deliver your answer
92 to the same in the office of the clerk of the circuit court of the United States, fifth circuit and eastern district of Louisiana, in the

city of New Orleans, within ten days after the service hereof; otherwise judgment will be entered against you for the amount claimed by the plaintiff, with interest and costs.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 15th day of March, A. D. 1882, and of the Independence of the United States of America the 106th year.

[SEAL.] (Signed) T. V. COUPLAND, *Dy Clk.*

Marshal's return.

Received March 15th, 1882, by the U. S. marshal, and on March 16, 1882, I served a true copy of the within citation and the accompanying petition, interrogatories, and order of court thereon, and also notices of garnishee on the Canal and Claiborne Street Railroad Company, garnishees herein, by handing the same to E. J. Hart, esq., in person,
93 in the city of New Orleans, the president of the aforesaid railroad company.

(Signed) E. S. CURRY,
Dy U. S. Marshal.

Citation to New Orleans Sugar Shed Company.—Issued March 15th, 1882

Circuit court of the United States, eastern district of Louisiana.

UNITED STATES OF AMERICA,
Eastern District of Louisiana:

JUDAH HART
vs.
CITY OF NEW ORLEANS.

To the New Orleans Sugar Shed Company, garnishee:

You are hereby cited to declare on oath what property or effects belonging to the defendant in this case you have in your possession or under your control, or in what sum you are indebted to said defendant, and also to answer, in writing under oath, the interrogatories annexed to the petition of which a copy accompanies this citation, and deliver your answer to the same in the office of the clerk of the circuit court of the United
94 States, fifth circuit and eastern district of Louisiana, in the city of New Orleans, within ten days after the service hereof; otherwise judgment will be entered against you for the amount claimed by the plaintiff, with interest and costs.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 15th day of March, A. D. 1882, & of the Independence of the United States of America the 106th year.

[SEAL.] (Signed) T. V. COUPLAND, *Dy Clk.*

Marshal's return.

Received March 15, 1882, by the U. S. marshal, and on the next day I

served a true copy of the within citation and accompanying petition, interrogatories, and order of court thereon, and also notice of garnishee, on the New Orleans Sugar Shed Company, garnishee herein, by handing the same to Jules A. Blanc in person, in the city of New Orleans, the president of the aforesaid sugar shed company.

95 (Signed) E. S. CURRY,
D'y U. S. Marshal.

Answer of New Orleans Sugar Shed Company.—Filed March 25th, 1882.

U. S. circuit court, eastern dist. of La.

JUDAH HART
vs.
CITY OF NEW ORLEANS. } No. 9662.

And now comes the N. O. Sugar Shed Company, through the president, Jules A. Blanc, and appearing in answer to the demand made of and interrogatories propounded to said company as garnishee in the above matter, say:

First, by way of exception to the demand, interrogatories, and garnishment, that whatever they may or shall hereafter owe to the said city of New Orleans is and will be due it under their contracts until the city of New Orleans by acts, before Wm. J. Castette, notary public, August 14th, 1869, and under ordinances No. 1528, ordinance 8, and No. 4492, A. S. of the council of the said city of New Orleans, as the bonus
96 or taxes agreed to be due said municipal corporation, no part of which is or can ever be subjected to seizure or garnishment by creditors of said city, the same belonging or pertaining to the revenue of the said city, all of which has been duly budgeted and appropriated for other purposes than the payment of the plaintiff in execution. Second, That the city of New Orleans is a necessary party to this attempt to divest her exclusive political right to such public dues, and now, still maintaining, and in no way waiving the foregoing exceptions, garnishee, to the interrogatories to them propounded, do answer as follows:

To the first interrogatory: No, except as follows: At the time of the service of notice of seizure and these interrogatories, M'ch 16, 1882, there was in the hands of the company six hundred and fifty-seven $\frac{13}{100}$ dollars, payable to the city on the 1st of April, 1882, being ten per centum as bonus or taxes on gross receipts of the company to that date ac-
97 cording to provisions of ordinance No. 1528, No. 8, and 4492, A. S. of the city of New Orleans and contract of this company, the respondents, with said city.

To the second interrogatory: No, except as stated in answer to the first interrogatory, which answer is reiterated here.

To the third interrogatory: No.

Wherefore respondent prays that the city of New Orleans be served with notice of these proceedings, and particularly with a copy of these exceptions and answers, and that said exceptions be maintained and the garnishment and seizure quashed and released.

(Signed) JULES A. BLANC,
Pres't N. O. Sugar Shed Co.

Jules A. Blanc, being duly sworn, says that all the facts and statements in the foregoing answers contained to each and all of the interogatories propound' in garnishment are true.

(Signed) JULES A. BLANC,
Pres't N. O. Sugar S. Co.

Sworn to and subscribed before me this 25th day of March, 1882.

(Signed) T. V. COUPLAND,
U. S. Comm'r.

98 *Marshal's return.*

Received March 27th, 1882, by the U. S. marshal, and on same day I served a true copy of the within answer and exception on The City of New Orleans, defendant herein, by handing the same to B. T. Walshe in person, the administrator of finance and acting mayor of the aforesaid city, in said city of New Orleans, Joseph A. Shakspeare, the mayor of said city, being sick and unable to perform the duties of mayor.

(Signed) E. S. CURRY,
D'y U. S. Marshal.

Answer of Canal and Claiborne Street Railroad Company.—Filed March 25th, 1882.

U. S. circuit court, east. dist. of Louisiana.

JUDAH HART
vs.
CITY OF NEW ORLEANS. } No. 9662.

The Canal and Claiborne Street Railroad Company, made garnishee herein, now comes into court, and for answer to the interrogatories propounded by and through its president, E. J. Hart:

99 To 1st interrogatory. No; except taxes of the year 1882.
To 2d interrogatory. No; except taxes of the year 1882.
To third interrogatory. No.

And for a full and correct statement of the facts upon which the above answers are made, respondent, further answering, says that the privilege of the right of way of the said Canal and Claiborne Street Railroad Company was granted for and in consideration of a bonus of two-sixteenths of a cent per passenger, payable; The rate of fare is five cents per passenger; that the total receipts of the company from 1st March, 1870, to 15th March, 1882, are:

For the year	1870	$118,515 20
" " "	1871	152,098 75
" " "	1872	144,373 05
" " "	1873	136,656 60
" " "	1874	115,625 40
" " "	1875	100,095 95
" " "	1876	96,101 60
" " "	1877	89,701 90
" " "	1878	90,205 20
" " "	1879	89,267 25

" " "	1880.....	95,269 45
" " "	1881.....	98,591 70
" " "	1882.....	20,889 60
		1,347,391 65

100 Your respondent further says that the receipts from the 15th March, 1872, to the 15' March, 1882, amount to the sum of $1,046,918.

Your respondent, further answering, says that he is informed, and believes, that the bonus was in lieu and place of the license; that the city could not claim both; that it has ceased to demand the bonus, but has imposed a license on the company, and the company has paid the same in 1880, based on the receipts of 1879; in 1881, based on the receipts of 1881, and in 1882, based on the receipts of 1881, viz, $375 each year, making in all $1,125, thereby releasing the company from any obligation to pay any bonus for said years. And respondent further says that he is informed and believes that any claim for the bonus based on the receipts of preceeding years is prescribed.

Respondent further swears that the said Canal and Claiborne Streets Railroad Company has already been garnished in the suits of Myra Clark Gaines, Samuel Smith Subrogee vs. City of New Orleans, No. 2695
101 of the U. S. circuit court, and of Charles Parsons vs. City of New Orleans, No. 8088 of same court, and that should judgments be rendered against said company they will amount to more than the company can in any event owe.

Respondent further says that the company has claims against the city of New Orleans for damages caused by overflows in 1869, 1871, and 1881, and against which it should have been protected by the city; and that the amount due for said damages exceeds any amount which would be due for the bonus, if any was due.

For this and other reasons the city has not required the bonus.

(Signed) E. J. HART,
Pres't C. & C. St. R. R. Co.

Subscribed and sworn before me March 29, 1882.

(Signed) T. V. COUPLAND,
Comm'r U. S. Cir. Court, East. Dist. of La.

Traverse of answers.—Entered and filed March 30th, 1882.

U. S. cir. court, E. dist. of La.

JUDAH HART
vs.
CITY OF NEW ORLEANS. } No. 9662.

102 On motion of E. H. Farrar and of A. G. Brice, of counsel for plaintiff, and on suggesting to the court that the answers of the Canal and Claiborne Street Railroad Company, and of the New Orleans Sugar Shed Company herein filed to the interrogatories in garnishment propounded to them, are false and untrue, and that they are indebted to the City of New Orleans in much larger sums than there stated in their said answers; and

on further suggesting that this plaintiff traverses the said answers, both in law and in fact—

It is ordered by the court that the said Canal and Claiborne Street Railroad Company and the said New Orleans Sugar Shed Company do shew cause, on Wednesday, the 5th day of April, 1882, at 11 a. m., why the said interrogatories should not be taken for confessed, and why judgment should not be rendered against them for the amount of plaintiff's claim, with interest and costs.

Marshal's return.

103 Received March 31st, 1882, by the U. S. marshal, and on the same day, month, and year I served a true copy hereof on E. J. Hart, esq., the president of the Canal and Claiborne Street Railroad Company, and on Jules A. Blanc, esq., the president of the New Orleans Sugar Shed Company, by handing to each a copy hereof, in person, in the city of New Orleans.

(Signed) E. S. CURRY,
D'y U. S. Marshal.

Agreement as to disposition of funds.—Filed April 5th, 1882.

JUDAH HART
vs.
CITY OF NEW ORLEANS. } No. 9662.

It is hereby agreed that any and all sums paid by garnishees in this cause shall be deposited in the registry of the court to await the decision of the question between plaintiff and defendant whether such money is subject to seizure under plaintiff's executions.

(Signed) E. H. FARRAR,
Att'y of Plaintiff.
C. F. BUCK,
City Att'y.

104 *Plea of prescription of Canal and Claiborne Street R. R. Co.—Filed April 5th, 1882.*

U. S. circuit court.

JUDAH HART
vs.
CITY OF NEW ORLEANS. } No. 9662.

The Canal and Claiborne Street Railroad Company, garnishees herein, come into court and pleads the prescription of three years, 3538 c. c., and of ten years, 3544.

(Signed) H. D. OGDEN, *Att'y.*

Hearing and verdict.—Extract from the minutes, November term, 1881.

NEW ORLEANS, *Wednesday, April 5th*, 1882.

Court met pursuant to adjournment; present, Hon. Don A. Pardee, circuit judge.

JUDAH HART
vs.
CITY OF NEW ORLEANS. } No. 9662.

The traverse to the answer of the Canal and Claiborne Street Railroad Company, garnishee, came on for trial—E. H. Farrar, for plaintiff;
105 H. D. Ogden, for garnishee—when the following-named jurors were called, and sworn to well and truly try the issue herein: (1) R. F. Theurer, (2) Ch's A. Adams, (3) E. J. Lawless, (4) Hy. Charbonnet, (5) John Bibotet, (6) Paul Lafon, (7) Jacob Hassinger, (8) A. L. Fash, (9) Thomas Cripps, (10) J. H. Ludwigsen, (11) R. De Lay, (12) H. W. Montgomery. And J. H. Ludwigsen was appointed foreman of the said jury.

And, after hearing the pleadings, the evidence, and argument of counsel, and receiving a charge from the court, the jury retired to deliberate upon their verdict.

After due deliberation the said jurors returned into court, and then and there, through their said foreman, delivered the following verdict, viz:

NEW ORLEANS, *April 5th*, 1882.

We, the jury, find for the plaintiff and against defendants Canal and Claiborne Street Railroad Company, as garnishees, the following sums:

$2,962.88	with interest at	5%	from	1	July,	1870.					
$3,802.46	"	"	"	"	"	1	"	1871.			
$3,609.32	"	"	"	"	"	1	"	1872.			
$3,416.41	"	"	"	"	"	1	"	1873.			
$2,890.63	"	"	"	"	"	1	"	1874.			
106 $2,502.39	with interest at	5%	per an.	from	1	July,	1875.				
$2,402.54	"	"	"	"	"	"	"	"	"	"	1876.
$2,242.54	"	"	"	"	"	"	"	"	"	"	1877.
$2,255.13	"	"	"	"	"	"	"	"	"	"	1878.
$2,231.68	"	"	"	"	"	"	"	"	"	"	1879.
$2,381.73	"	"	"	"	"	"	"	"	"	"	1880.
$2,464.79	"	"	"	"	"	"	"	"	"	"	1881.
$522.24	"	"	"	"	"	"	"	"	"	"	1882.

$33,684.74

Total sum thirty-three thousand six hundred and eighty-four $\frac{74}{100}$ dollars, with interest on the various sums from dates as above stated until payment.

(Signed) JOHN H. LUDWIGSEN, *Foreman.*

Whereupon it was ordered that the said verdict be recorded, and it is done accordingly.

Rule for new trial.—Filed April 8th, 1882.

Circuit court of the United States for the eastern district of Louisiana.

JUDAH HART
vs.
CITY OF NEW ORLEANS. } No. 9662.

On motion of H. D. Ogden and J. R. Beckwith, att'ys for the
107 Canal and Claiborne Street R. R. Co., garnishee, and on suggesting to the court that the said Canal and Claiborne Street R. R. Co. feels aggrieved by the verdict rendered herein against said company on the 5th inst., and believes and alleges the same to be erroneous for the following reasons among others:

1st. That said trial was had upon insufficient and informal issues not properly made or pleaded.

2d. That the so-called traverse of the answers of said garnishee is vague, uncertain, and not in the form required by law in such cases, and rendered no proper issue in proper form for a trial by jury or legal *loses* for the verdict.

3d. That there was no sufficient evidence on the part of the plaintiff to warrant any verdict of proper issues had been made in proper form, for the reason among others that there was no proof or evidence either of any judgment againstt he City of New Orleans in such condition that an execution could simply issue thereon, or that there was any valid live
108 execution or fieri facias in the hands of the marshal of this court given to the jury or considered by them.

4th. That the verdict of the jury was and is contrary to the law and the fact, and cannot on the face thereof, among other things in the fact that in and by said verdict interest is charged against said garnishee not from the date when it is alleged the several instalments become due to the City of New Orleans, but from the 1st of July of each year.

5th. The court erred in charging the jury to so find interest in their verdict.

6th. That the court erred in charging the jury that the prescription of three years did not apply and govern in this cause.

7th. The finding of the jury is in no manner responsive to any issue of fact or prayer in the alleged traverse; that the only question made by the paper was whether the answers of the garnishee should not be taken for confessed as a matter of law.

109 8th. That no legal judgment for the money named in the verdict can be entered on said verdict.

It is ordered that the said plaintiff, Judah Hart, show cause on Wednesday, the 19th of April, at 11 o'clock a. m., why said verdict should not be set aside and a new trial granted in this cause.

Rule to quash execution.—*Filed April 15th*, 1882.

JUDAH HART
vs.
CITY OF NEW ORLEANS. } No. 9662.

To the honorable the judges of the circuit court of the United States for the fifth circuit and eastern district of La.:

And now appears the defendant in the above-entitled cause, The City of New Orleans, through undersigned counsel, and on suggesting to the court that plaintiff in the above-entitled cause has issued a writ of fi. fa. in execution of the judgment herein rendered in his favor, and signed on the day of , 1882, and under and by virtue of said writ the marshal of this hon. court has seized the following-described property, to wit:

110 1. Square A, bounded by Custom-House and Bienville streets and the line of the Louisville and Nashville and Morgan Railroads and the sugar landing; said square measuring 121 feet 2 inches on Bienville street, and Custom-House street, 340 feet 3 inches on the line of said railroads, and 340 feet 6 inches and 3 lines on the line of said sugar landing.

2. Square B, bounded by Custom-House, Bienville, and the line of the Louisville and Nashville and Morgan Railroads; said square measuring 120 feet front on Custom-House street, 80 feet 6 inches front on Bienville street, 308 feet 8 inches and 3 lines front on Front street, 153 feet front on , and 171 feet 10 inches and 3 lines front on the line of said railroads.

3*a*. Square C, being a triangle of land by Bienville, Conti, Front streets, and the line of the Louisville and Nashville and Morgan Railroads, measuring 64 feet 1 inch and 9 lines on Bienville street, 274 feet 0 inch and 1 line on the line of said railroads, and coming to a front near the intersection on Front and Conti streets.

111 3*b*. Square D, bounded by Bienville, Conti, the line of the Louisville and Nashville Railroads, and the sugar landing, measuring 92 feet 6 inches and 3 lines on each of said Bienville and Conti street' by 330 feet 6 inches and 7 lines on the line of said railroads, and 330 feet 0 inches and 2 lines on said sugar landing.

4. Square E, bounded by Conti, St. Louis, Clay, and Front streets, said square being pentagonal in shape, and measuring 119 feet 11 inches and 7 lines on Conti street, 74 feet 2 inches and 5 lines on St. Louis street, 309 feet 8 inches and 7 lines on Clay street, and as to the two sides on Front street 134 feet 0 inches and 5 lines as to one, and 194 feet 2 inches and 7 lines as to the other.

5. All the right, title, and interest of the city of New Orleans of every kind and nature to the sheds, structures, buildings, and improvements in the said squares A, B, C, D, & E, as set forth in city ordinances of 1528 N. S., approved August 14, 1869, and in the notarial act passed, before W. J. Castell, notary public, on August 18, 1869, between said
112 city and F. B. Fleitas and others, said right consisting:

1. Of the option to take said sheds and structures at one-half of their appraised cash value at the expiration of twenty-five years from

November 1, 1871, the right and power to appoint appraisers as designated in said ordinances and contract for the purpose of determining said appraised cash value.

2. The option of extending the right to use said sheds and squares as designated in said ordinances and contracts for 15 years subsequent to said November 1st, 1896.

3. Of the right of reversion of said sheds to the city in full ownership after the expiration of said 15 years' additional lease.

And in addition to the property described has seized or attempted to seize by garnishment process certain rights, credits, and claims in the hands of third parties, to wit: The New Orleans Sugar Shed Company, The Canal and Claiborne Street Railroad Company, and The Orleans Railroad Company.

113 And the said garnishees have admitted indebtedness or been adjudged to be indebted to mover as follows, to wit:

The Canal and Claiborne Street Railroad Company has been decreed on traverse to be indebted to the city in the sum of thirty-three thousand six hundred and eighty-four $\frac{74}{100}$ dollars, The Orleans Railroad Company in the sum of two thousand two hundred and eighty-eight $\frac{04}{100}$ dollars, and the Sugar Shed Company in the sum of dollars, and by agreement of counsel of record herein said sums shall be paid into the registry of the court to abide the decision of the question here presented; and mover and opponent now says and avers that the said Judah Hart, plaintiff in execution aforesaid, has or had no legal right to the issuance of said writ of fi. fa., and the same issued illegally and should be quashed and all proceedings thereunder stayed, for the following reasons, to wit:

114 First. The judgment in favor of said plaintiff in execution in this cause is not absolute, and not such a judgment the payment of which can be enforced by seizure and sale of defendant's property on execution; that said judgment is founded upon certain contracts with the city of New Orleans made in connection with the ordinary affairs and administration of the government, as will appear by reference to the petition of plaintiff in said cause and exhibits annexed thereto, which are made part of this opposition; that the condition of said contracts, as to the payment, was that same shall be paid out of the current revenues of the city, derived from taxation and other sources, and not otherwise; and the claims founded upon such contracts did not and could not constitute an absolute and unconditional indebtedness of the city of New Orleans; that the city of New Orleans, through her council, in due course of government has passed ordinances directing the payment of such claims

115 out of revenues of the year in which the claims originate, and the power, duty, obligation of the city of New Orleans is confined and limited.

a. To the levy of the proper or legal tax, imposition of licenses, etc., which make up the revenues constituting the alimony of the city of New Orleans.

b. The collection of said revenues; and

c. Its appropriation or distribution in payment of current expenses of the government, etc.

That your mover and opponent is prohi'ted from incurring any expense or creating any indebtedness in excess of such revenue. And oppo-

ment says and avers that said judgment in favor of said Judah Hart is only declarative of his right under his claim to be paid out of the revenue of the respective years in which the same arose, and entitles him to compel the city of New Orleans to exhaust to the full extent authorized by law her taxing power, should it appear that the taxes levied are insufficient to meet his demands, but does not authorize him to seize the property
116 of the defendant under writ of fi. fa.

And opponent further says and avers that there are claims, or so-called floating or scrip indebtedness, being the same as that upon which said Judah Hart has obtained judgment against the city of New Orleans, for various years, aggregating a sum exceeding $1,200,000, which are to be paid out of revenues or back taxes, exceeding in total the amount of such outstanding claims.

That most of said claims are held by citizens of the State of Louisiana, between whom and this opponent this hon. court can acquire no jurisdiction; that the supreme court of the State of Louisiana has decided that claims of the character and founded on the contracts held by said Judah Hart are not debts of the city of New Orleans, but only claims against the current revenues as aforesaid, and they are barred by said interpretation of the law from any and all other rights than that of being,
117 in due course of time, paid out of said revenue; the execution of the judgment of said Judah Hart in the manner attempted inequitable and against good conscience.

And opponent now further says and avers that even if said judgment be absolute and unconditional, and such as might ordinarily be enforced by the writ of fi. fa., yet said writ issued illegally and improvidently, for the reason that the execution of judgments against the city of New Orleans by means of writs of fi. fa. is prohibited by the act No. 5 of the acts of general assembly of the State of La. of 1870, E. S., which act is specially referred to and made part hereof. Mover and opponent avers that said act is binding and obligatory upon this honorable court, and upon said Judah Hart, plaintiff in execution; especially for the reason that all of the rights and claims upon which said judgment was rendered arose and were acquired by said Judah Hart after the passage of said act No. 5.

118 And opponent avers further that, even if the writ could otherwise legally issue, that it issued prematurely, and all proceedings thereunder should be quashed and stayed, for the reason that no proceeding in execution of a judgment against the city of New Orleans, whether by writ of fi. fa. or mandamus to levy taxes, can be had until the judgment sought to be enforced has been registered in the office of the administrator of accounts of the city of New Orleans, as required by sec. 2 act No. 5 of acts of 1870, E. S., aforesaid, and all efforts to obtain payment in the manner provided in said act have been exhausted.

And mover and opponent specially say and aver that said judgment has not been so registered prior to the issuance of said writ of fi. fa., and said writ should, therefore, be quashed and set aside as illegally issued.

And opponent now further avers and says, in the event that the
119 foregoing reasons why the writ of fi. fa. aforesaid should be quashed and annulled should not be held sufficient to that end, that the five different squares of ground hereinbefore described, seized, and advertised for sale, are loci publici, being part and portion of the public

levee or quay of the port of New Orleans, said public levee being a large strip of land of uneven width extending along the entire city front between that part of the situs of the city of New Orleans which marks the limit of property held in private ownership by private individuals and the banks of the Mississippi River; that said public levee, of which said squares of ground constitute a part, has always been a locus publicus, so recognized and used, over which and of which the city of New Orleans has no title, but only a right of control and administration for public use, etc., and has no authority, voluntarily or otherwise, to alienate same or make title thereto; that said grounds have always been hors de
120 commerce, dedicated to public use, and the city of New Orleans has never divested them of such public character or use, and has neither the right nor power to do so; and the same is not subject to seizure and sale under *under* execution.

And mover and opponent specially shows that her permission to the corporation known as the New Orleans Sugar Shed Co., to erect certain buildings on said lots for purposes defined in ordinance 1528, N. S., and ordinances 4492 and 7615, A. S., all of which are made part hereof, and copies annexed and filed, is in itself a dedication to public use for the benefit of commerce, and in no manner affects or changes the character of the locality as locus publicus, but constitute merely such special use or dedication as the city council by virtue of its administrative control may ordain.

And mover and opponent says and avers that, in addition to being a dedication to public use, said sugar sheds were permitted to be con-
121 structed as a source of public revenue, the proceeds of which are annually appropriated and expended for the maintenance of the municipal government in various functions.

And opponent further says and avers that her rights, title, and interest in and to the buildings erected on said squares by said Sugar Shed Company, and her right to collect and receive revenue seized as described before, are not subject to seizure, because they constitute part of the public property dedicated to public use.

That especially the right of the city to collect charges as provided by said ordinances are not subject to seizure, said charges constituting part of the public revenue, and those collectable during the current year, 1882, have already been embraced in the estimate of receipts or annual budget required to be made in accordance with the terms and provisions of sec. 1, act No. 38 of the acts of 1879.

122 And mover shows further that the Canal and Claiborne Street R. R. Company and the Orleans R. R. Co., if any indebtedness to the city is established against them, the same as will appear by reference to the proceedings had on the traverse to their answers as garnishees made part hereof *as* for bonus due and payable monthly for the respective franchises to maintain and operate their street railways; and the bonus so stipulated constitutes a part of the general revenues of the city of New Orleans, allowed her for the maintenance and alimony of the government, and the bonus due and collectable each year as a part of the revenues of such year payable into the city treasury *as* a public revenue out of which appropriations for such year must be paid, and said bonus or proceeds thereof cannot be divested to any other purpose and is not subject to seiz-

ure under execution as herein attempted, especially as those appropriations for current expenses of government remaining unpaid for want
123 of sufficient cash in the treasury for each and every year during which bonus, seized and in the hands of the aforesaid company's, accrued and became due.

And, by reason of the foregoing, mover and opponent prays that said Judah Hart, plaintiff in execution, do shew cause on Saturday the 15th day of April, 1882, why the writ of fi. fa. herein issued should not be quashed, annulled, and all proceedings thereunder perpetually prohibited and enjoined as having been illegally issued and allowed, and that he do further then and there shew cause, even if it should be held that he is entitled to the writ of execution, why all the property of every kind whatsoever, real, movable, rights, credits, money, etc., seized or attempted to be seized, should not be declared to be public property and revenues free and exempt from seizure, and accordingly that said seizure thereof be quashed and annulled and mover prays that, pending this proceeding, all
124 further action under said execution be stayed and suspended, and as in duty bound, &c.

(Signed) C. F. BUCK, *City Att'y.*
Do. WYNNE ROGERS,
Of Counsel.

Jury waived and cause submitted to court on this motion to quash.
New Orleans, April 15th, 1882.

(Signed) C. F. BUCK, *City Att'y.*
Do. E. H. FARRAR,
Att'y Judah Hart.

Hearing and continuance of the motion to quash execution.—Extract from minutes of April 15th, 1882.

JUDAH HART
vs. } No. 9662.
CITY OF NEW ORLEANS.

This cause came on to be heard before the court on the motion to quash the execution herein this day filed by the defendant, the parties in the cause having filed a stipulation waiving the intervention of a jury.

E. H. Farrar, for pl'ff; C. F. Buck, city attorney, for defendant.

And after hearing the motion and answers thereto and evidence,
125 it was ordered that the matter be continued till Tuesday, 18th inst., at 11 o'clock a. m.

Answer to rule to quash, etc.—Filed April 15th, 1882.

U. S. circuit court, E. dist. of La.

JUDAH HART
vs. } No. 9662.
CITY OF NEW ORLEANS.

Now comes the plaintiff, Judah Hart, and for answer to the motion and rule to quash the fi. fa. herein taken, pleads and says:

That as regards the right of this plaintiff to issue execution on the abso-

lute judgment obtained in this cause, all the matters and things averred in the said motion were in issue on the trial of this cause on the merits, and are barred by the judgment.

And, further answering, this plaintiff denies all and singular the allegations in the said motion, except those herein specially admitted.

He specially denies that any of the property or funds herein seized are public property, and not liable to seizure, but, on the contrary, he
126 avers that all of the said property and funds are liable to seizure.

Wherefore he prays that the said rule may be discharged with costs.

(Signed) E. H. FARRAR,
A. G. BRICE,
Att'ys.

Hearing and submission.—Extract from minutes of April 18th, 1882.

JUDAH HART
vs.
CITY OF NEW ORLEANS. } No. 9662.

This cause, as continued from 15th instant, came on to be further heard on the said motion to quash the execution herein, and after hearing further evidence and the arguments of counsel for the respective parties, the court took time to consider.

Order, judgment amended nunc pro tunc.—Extract from minutes of April 19th, 1882.

JUDAH HART
vs.
CITY OF NEW ORLEANS. } No. 9662.

127 Ordered, That the judgments herein rendered against the Canal and Claiborne Street Railroad Company, and the Orleans Railroad Company on the 7th day of April, 1882, be amended nunc pro tunc, as follows:

And considering the stipulations made herein between the court for the plaintiff, the city attorney, the garnishees, and the counsel for Chas. Parsons and Sam Smith:

It is ordered that the garnishee pay the said amount, with interest as aforesaid, into the registry of the court, subject to the rights of all parties concerned.

Hearing and submission of rule of Canal & Claiborne St. R. R.—Extract from minutes of April 19th, 1882.

JUDAH HART
vs.
CITY OF NEW ORLEANS. } No. 9662.

This cause came on to be heard on the motion of the Canal and Claiborne Street Railroad Company, garnishee, for a new trial, and was

128 argued by the counsel for the plaintiff and the said garnishee and submitted.

And the court took time to consider.

Rule to expunge minutes of 19th instant.—Extract from the minutes of April 20th, 1882.

JUDAH HART
vs.
CITY OF NEW ORLEANS. } No. 9662.

On motion of J. R. Beckwith and H. D. Ogden, attorneys for the Canal and Claiborne Street Railroad Company, sought to be made garnishee, and on suggesting to the court that the said Canal and Claiborne Street Railroad Company never at any time did agree that the money claimed from said Canal and Claiborne Street Railroad Company should be by the terms of judgment or under any other circumstances paid into court to await any contest as to ownership, and that the entry on the minutes of 19th inst., in so far as it sets out or recites that there
129 was any stipulation to that effect on the part of said Canal and Claiborne Street Railroad Company, or any agreement that said company pay any money into court by said Canal and Claiborne Street Railroad Company is not in accordance with the fact, and that said mover herein in all things disputes the same, and alleges that said entry is not true in fact in that respect. It is ordered that all parts and portions of said entry which show or can be taken as evidence to show any consent on the part of said garnishee above named, that there shall be any judgment ordering "the garnishees to pay the said amount (to wit, the amount named in the verdict or any other amount) into the registry of the court, subject to the rights of parties concerned," be expugned, cancelled, and erased from the minutes of the proceedings of this court as disputed and untrue in fact, and not resting on the evidence required by rule 22 of the rules of this court.

130 It is ordered that the plaintiff herein shew cause on Wednesday, April 26th, 1882, at 11 a. m. why said minutes should not be amended and expunged.

Motion in arrest of judgment.—Filed April 21st, 1882.

JUDAH HART
vs.
CITY OF NEW ORLEANS. } No. 9662.

United States circuit court, fifth circuit, eastern district of Louisiana.

JUDAH HART
vs.
CITY OF NEW ORLEANS. } No. 9662.

Now comes the Canal and Claiborne Street Railroad Co., by J. R. Beckwith and H. D. Ogden, attorneys and counsel, and move the court for and in behalf of the said corporation that the proposed judgment,

written up in this cause upon the minutes and record of the court in this cause against the said corporation, as garnishee, be expunged from
130½ the record and the minutes, and that the same be never signed and made operative, and that any and all judgments against said Canal and Claiborne Street Railroad Co., by reason of any supposed proceedings against the said corporation as garnishee, or by reason of any verdict herein be arrested, for reasons, among others.

1st. That there is nothing in the said supposed proceeding of garnishment to warrant or support any verdict or any judgment of any kind against the said corporation, the Canal and Claiborne Street Railroad Co. in favor of the said Judah Hart, the plaintiff in execution, or any other person.

2d. That there is no issue made in the said cause, nor had there been any issue or default made on the said supplemental petition herein prior to the said verdict, nor at any time.

3d. That there has been no issue or service of any citation against or upon said supposed supplemental petition in this cause either directed or served upon the said mover, the Canal and Claiborne Street Railroad Co.

131 4th. That there has been no service upon the mover of the original and supplemental petition in this cause, with due citation, as appears by the record herein.

5th. That there has been no service of the supplemental petition upon the defendant in execution. The City of New Orleans, and the said City of New Orleans has not been made a party to, or brought into court in said proceeding against the Canal and Claiborne Street Railroad Co., the mover, in such a manner as to conclude the said city of New Orleans in any alleged demand against the said mover or in such a manner as to warrant or sustain any verdict or judgment against the said mover as garnishee.

6th. That it apppears from the record herein, that at the time when said matters were submitted to the jury, there was no issue of fact to go to the said jury, that there was no answer to the supplemental petition nor any default taken thereon.

132 7th. That had there been any issue of fact submitted to the jury the said question was not whether the plaintiff, Judah Hart, should have a verdict against the Canal and Claiborne Street Railroad Co., garnishee, but whether the said supposed answer to interrogatories on facts and articles should be taken as confessed, and used upon the trial of the issues made or to be made on the said supplemental petition; said issues had not been made either by answer to said suplemental petition or judgment by default thereon.

8th. That it appears from the record in said cause that under no circumstances could the Canal and Claiborne Street Railroad Co. become or be liable to pay any supposed balance due the city of New Orleans to said plaintiff, Judah Hart, for the reason that it appears from the record herein that said supposed debt of the Canal and Claiborne Street Railroad Co. to the city of New Orleans, the defendant in execution, if due and owing was and is a part of the municipial revenues of the city beyond
133 the reach of execution or garnishment process, and that had the said Canal and Claiborne Street Railroad Co., garnishees, produced the money or property claimed in kind or in species, and placed and held

the same within reach of the plaintiff in execution he could not lawfully levy any fi. fa. upon the same.

9th. That under the statutes of the State no interrogatories on facts and articles can be directed to a non-sentient being or corporation in garnishee proceedings, as the said interrogatories on facts and articles are only the means of probing the conscience to procure evidence.

20th. That there is nothing in the said record to warrant or support any judgment against the Canal and Claiborne Street Railroad Co. as garnishee in favor of the said Judah Hart, the plaintiff, in judgment, or any other person, and prays this honorable court to fix a time when said motion can be heard, and that the said Judah Hart and the said City of New Orleans be notified thereof.

(Signed) J. R. BECKWITH,
H. D. OGDEN,
Att'ys for Canal & Claiborne St. R. R.

134 *Order: Motion in arrest fixed.—Extract from minutes of April* 21, 1882.

JUDAH HART
vs. No. 9662.
CITY OF NEW ORLEANS.

Upon due consideration of the motion in arrest of judgment herein, this day presented and filed, by the Canal and Claiborne Street R. R. Co., garnishee, it was ordered by the court that said motion be heard on Wednesday, 26th inst., at 11 a. m., and that the pl'ff and the City of New Orleans be notified thereof by service on them of a copy of said motion in arrest of judgment.

Order: Motion of Canal & Claiborne St. R. R. Co. refused.—Extract from minutes of April 21, 1882.

JUDAH HART
vs. No. 9662.
CITY OF NEW ORLEANS.

This cause came on to be heard on the motion of the Canal and Claiborne Street R. R. Co. for a new trial, and was argued by counsel. On consideration whereof it is ordered that said motion be overruled and a new trial be refused, w

Supplemental petition & interrogatories.— iled April 24, 1882.

JUDAH HART
vs. No. 9662.
CITY OF NEW ORLEANS.

135 To the honorable the judges of the circuit court of the United States for the fifth circuit and eastern district of Louisiana.

The supplemental petition of Judah Hart respectfully sheweth that upon the judgment obtained in this case for the sum of one hundred and twenty-

one thousand six hundred and ninety-seven $\frac{18}{100}$ dollars costs, petitioner has issued a writ of fi. fa.; and having reason to believe that the Canal and Claiborne Street Railroad Company and the Orleans Railroad Company, corporations organized under the laws of the State of Louisiana, third persons, are indebted unto the said defendant in execution, or have property or effects in possession or under control belonging to said debtor, or are indebted to said debtor, petitioner has caused the seizure to be made in the hands of said third persons.

Therefore petitioner prays that said Canal and Claiborne Street Railroad Company and said Orleans Railroad Company be cited and
136 ordered to answer under oath the annexed interrogatories, and, after due proceedings, condemned to pay the amount of said judgment and costs.

(Signed) A. G. BRICE,
E. K. FARRAR,
Att'ys.

INTERROGATORIES.

1st interrogatory. Had you in your hands or under your control, directly or indirectly, at the time of the service of notice of seizure in this case, or since, or at the time of service of these interrogatories, or at any time since, or at the time of answering these interrogatories, any money, rights, credits, or other property whatsoever, directly or indirectly belonging or due to the said defendant in execution, or in which it has or had any direct or indirect interest for the whole or for a part or otherwise; and, if yea, what is the nature, description, and amount thereof, and is the same not sufficient to pay or satisfy the full amount of said judgment and costs; or, if less, to what amount? You being asked and required to make a full disclosure in relation to the same.

137 2d interrogatory. Were you not at the time of service of notice of seizure upon you in this case, or since then, or at the time of service of these interrogatories, or since, or at the time of answering the same, directly or indirectly indebted or obligated unto the said defendant in execution for anything or for any sum whatever, whether for yourself alone, or together with others, in consequence of any sale, exchange, or transfer, or assignment or payment, or novation, or compensation, or letting, or hiring, or service, or labor, or employment, or affreightment, or insurance, or job, or work, or rent, or interest, or partnership, or loan, or deposit, or trust, or bailment, or agency, or suretyship, or compromise, or pledge, or in consequence of any contract or obligation whatever, whether the same be due or to become, and whether the interest of said defendant in execution be direct or indirect, or be for the whole or a part only, or whether it be by bill, note, or otherwise; and, if yea, what is the
138 nature, description, and amount thereof, and is the same not sufficient to pay or satisfy the full amount of said judgment and cost; or, if less, what amount? You being asked and required to make a full and detailed disclosure in relation to the same.

3d interrogatory. Have you at any time since the service of notice of seizure in your hands herein made, directly or indirectly, unto or with the said defendant in execution, any payment or novation or compromise

or arrangement, or given it any note or written obligation, or received from it, directly or indirectly, any receipts or acquittance, or received or acquired against it, directly or indirectly, any compensation or set-off, or demand, or note, or other obligation, or right of action? And, if yea, state the nature, description, and amount thereof, and the time, place, and circumstances of the same.

Let the within supplemental petition be filed, and let the Canal & Clairborne Street Railroad Company and the Orleans Railroad Company be made garnishees herein, and cited to answer the accompanying in-
139 terrogatories, under oath, in writing, and as the law directs, as herein prayed for.

New Orleans, April 24th, 1882.

(Signed) DON A. PARDEE, *Judge.*

Citation in garnishment to Canal & Clairborne Street Railroad Company.—Issued April 24th, 1882.

Circuit court of the United States, fifth circuit and eastern dist. of Louisiana.

UNITED STATES OF AMERICA,
Eastern District of Louisiana:

JUDAH HART
vs.
CITY OF NEW ORLEANS. } No. 9662.

The President of the United States of America to the Canal and Claiborne Street Railroad Company, garnishee, greeting:

You are hereby cited to declare on oath what property or effects belonging to the defendant in this case you have in your possession or under your control, or in what sum you are indebted to said defendant, and also to answer in writing, under oath, the interrogatories annexed to the supplemental petition, of which a copy accompanies this citation, and
140 deliver your answer to the same in the office of the clerk of the circuit court of the United States, fifth circuit and eastern district of Louisiana, in the city of New Orleans, within ten days after the service hereof; otherwise judgment will be entered against you for the amount claimed by the plaintiff, with interest and costs.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 24' day of April, A. D. 1882, and of the Independence of the United States of America the 106th year.

(Signed) F. G. WOOLFLEY, *Clerk.*

Marshal's return.

Received April 24, 1882, by the U. S. marshal, and on April 25th, 1882, I served a true copy of the within citation and the accompanying petition, interrogatories, and order of court thereon, together with notice of garnishee, on the Canal and Claiborne Street Railroad Com-

141 pany, garnishee herein, by handing the same to E. J. Hart, esq., in person, in the city of New Orleans, the president of the aforesaid railroad company.

(Signed) E. S. CURRY,
D'y U. S. Marshal.

Motion to quash reinstated.—Extract from minutes April term, 1882.

NEW ORLEANS, *Tuesday, April* 25, 1882.

Court met pursuant to adjournment.
Present, Hon. Don A. Pardee, circuit judge.
" " E. C. Billings, district judge.

JUDAH HART
vs.
CITY OF NEW ORLEANS. } No. 9662.

Ordered, That the motion to quash heretofore submitted be reinstated and placed on the docket of this day for argument before both judges.

Hearing and continuance.—Extract from minutes of April 25th, 1882.

JUDAH HART
vs.
CITY OF NEW ORLEANS. } No. 9662.

142 This cause came on to be heard before his honor Don A. Pardee, circuit judge, and his honor E. C. Billings, district judge, on the motion to quash execution herein, and was argued by C. F. Buck, city att'y, on behalf of mover, and partially by E. K. Farrar, on behalf of plaintiff, when the court ordered that the matter lay over until to-morrow at 10 a. m.

Motion to quash, &c., continued.—Extract from minutes of April 26th, 1882.

JUDAH HART
vs.
CITY OF NEW ORLEANS. } No. 9662.

It is ordered by the court that the motion to quash seizure herein be continued until to-morrow at 12.30 p. m.

Order expunging words from minutes.—Extract from minutes, April 26th, 1882.

JUDAH HART
vs.
CITY OF NEW ORLEANS. } No. 9662.

143 This cause came on to be heard on the motion to expunge herein, made by the Canal and Claiborne Street Railroad Company, garnishee, and was argued by counsel.

On consideration whereof it is ordered that the words "the garnishees," in the following entry on the minutes of April 19th, 1882, be expunged therefrom, to wit:

"And considering the stipulations made between the counsel for the plaintiff, the city attorney, the garnishees, and the counsel for Charles Parsons and Sam Smith:

"It is ordered that the garnishees pay the said amount with interest as aforesaid into the registry of the court, subject to the rights of all parties concerned." So that said entry shall read as follows:

And considering the stipulations made between the counsel for the plaintiff, the city attorney, and the counsel for Charles Parsons and Sam Smith:

144 It is ordered that the garnishee pay the said amount with interest as aforesaid into the registry of the court, subject to the rights of all parties concerned.

Motion in arrest of judgment overruled—Extract from the minutes of April 26th, 1882.

JUDAH HART
vs.
CITY OF NEW ORLEANS. } No. 9662.

This cause came on to be heard on the motion in arrest of judgment herein, made by the Canal and Claiborne Street Railroad Company, and was argued by counsel.

On consideration whereof it is ordered that said motion be overruled.

Judgment against Canal and Claiborne Street Railroad Company—Extract from judgment book, November term, 1881.

NEW ORLEANS, *Wednesday, April 5th*, 1882.

Court met pursuant to adjournment.

Present, Hon. Don A. Pardee, circuit judge.

JUDAH HART
vs.
CITY OF NEW ORLEANS. }

145 By reason of the verdict of the jury herein and in accordance therewith, it is ordered, adjudged, and decreed that the Canal and Claiborne Street Railroad Company, garnishees herein, be condemned to pay to the plaintiff, Judah Hart, the sum of thirty-three thousand six hundred and eighty-four $\frac{74}{100}$ dollars, with interest at the rate of five per cent. per annum on the following sums from the following dates, viz: On $2,962.88 from 1 July, 1870; on $3,802.46 from 1 July, 1871; on $3,609.32 from 1 July, 1872; on $3,416.41 from 1 July, 1873; on $2,890.62 from 1 July, 1874; on $2,502.39 from 1 July, 1875; on $2,402.54 from 1 July, 1876; on $2,242.54 from 1 July, 1877; on $2,255.13 from 1 July, 1878; on $2,231.68 from 1 July, 1879; on $2,381.73 from 1 July, 1880; on $2,464.79 from 1 July, 1881; on $522.24 from 15th March, 1882, until paid, and costs.

It is further ordered and decreed that said amount, with interest, as aforesaid, be deposited in the registry of the court, subject to the terms of the stipulation this day entered into by counsel for said plaintiff
146 and C. F. Buck, city attorney for the City of New Orleans, on file herein.

Amendment—Entered April 19th, 1882.

Ordered, That the judgment herein rendered against the Canal and Claiborne Street Railroad Company on the 7th day of April, 1882, be amended nunc pro tunc as follows:

And considering the stipulations made herein between the counsel for the plaintiff, the city attorney, and the counsel for Charles Parsons and Sam Smith:

It is ordered that the garnishee pay the said amount, with interest, as aforesaid, into the registry of the court, subject to the rights of all parties concerned.

Judgment rendered April 5th, 1882.

Judgment signed April 26th, 1882.

(Signed) DON A. PARDEE, *Judge.*

Bill of exceptions of the Canal and Claiborne Street Railroad Co.—Filed April 26th, 1882.

Circuit court of the United States, eastern district of Louisiana.

JUDAH HART
vs.
CITY OF NEW ORLEANS. } No. 9662.

147 Be it remembered that afterwards, and at the November term of said court, A. D. 1881, and on the 21st day of April, A. D. 1882, thereof, and before any final judgment against the said Canal and Claiborne Street Railroad Company, as garnishee, had been signed and become final, the said Canal and Claiborne Street Railroad Company, by its counsel in open court, his honor Don A. Pardee, circuit judge presiding, came into court and then and there made and presented to the court the following motion, which was in writing, and then and there filed and ruled insaid cause, that is to say: is the motion in arrest of judgment transcribed on page of this transcript.

And thereupon the court ordered that said motion be set down for hearing on Wednesday, the 26th day of April, A. D. 1882, of the April term of said court, A. D. 1882, and the said counsel for Judah Hart, pl'ff, being notified thereof, appeared in said court on said last-named
148 day, the court then and there being in session, said motion came on for hearing before the court, and the court after hearing the same did overrule and refuse said motion, to which said ruling and judgment of the court in that particular the said counsel for the said Canal and Claiborne Street Railroad Company did then and there except, and then and there tender to the court this its bill of exceptions in that behalf, and pray that the same may be signed and made part of the record in this cause, and it is done accordingly.

(Signed) DON A. PARDEE, *Judge.*

Hearing and submission of motion to quash.—Extract from minutes of April 27th, 1882.

JUDAH HART
vs. No. 9662.
CITY OF NEW ORLEANS.

This cause came on this day to be further heard before their honors, the circuit judge and the district judge, on the defendant's motion
149 to quash the execution herein, and was argued further by the counsel for the parties, respectively, and submitted; when the court took time to consider.

Motion and order for supersedeas by Canal and Claiborne street Railroad Company.—Extract from minutes of April 28th, 1882.

JUDAH HART
vs. No. 9662.
CITY OF NEW ORLEANS.

On motion of J. R. Beckwith and H. D. Ogden, attorneys for the said Canal and Claiborne Street Railroad Company, and on suggesting to the court that the said railroad company has sued out a writ of error herein returnable to the Supreme Court of the United States at its next term, from the final judgment rendered herein against said company, as garnishee, and has lodged a copy of said writ with the clerk of this court, as required by law,

It is ordered that said writ of error allowed herein be and oper-
150 ate a supersedeas herein, upon the said plaintiff in error, the Canal and Claiborne Street Railroad Company, giving bond with good and sufficient surety, conditioned as the law directs, in the sum of fifty-one thousand dollars.

Bond for writ of error.—Filed April 29th, 1882.

Know all men by these presents that we, the Canal and Claiborne Streets Railroad Company, as principal, and E. J. Hart, of New Orleans, as sureties, are held and firmly bound unto Judah Hart in the full sum of fifty-one thousand ($51,000) dollars, to be paid to the said Judah Hart, his certain attorney, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 29th day of April, in the year of our Lord one thousand eight hundred and eighty-two.

151 Whereas, lately at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the eastern district of Louisiana, in a suit depending in said circuit court, wherein Judah Hart is plaintiff and the City of New Orleans defendant, and the said Canal and Claiborne Streets Railroad Company is defendant, as garnishee, judgment was rendered against the said Canal and Claiborne Streets Railroad Company, garnishees, and defendant in said garnishee proceedings, and the said Canal and Claiborne Streets Railroad Company, having obtained a

writ of error and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said Judah Hart, citing and admonishing him to be and appear at the Supreme Court of the United States to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that, if the said
152 Canal and Claiborne Streets Railroad Company shall prosecute its writ to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) CANAL AND CLAIBORNE RAILROAD COMPANY.
JOS. H. DEGRANGE, *Sec'y.* [L. S.]
E. J. HART. [L. S.]

Sealed and delivered in the presence of—
(Signed) J. R. BECKWITH.

UNITED STATES OF AMERICA,
Eastern District of Louisiana:

Personally appeared E. J. Hart, who, being duly sworn, deposes and says that he is the surety on the within bond; that he resides in the city of New Orleans, and is worth the full sum of fifty-one thousand dollars over and above all his debts and liabilities, and property exempt from execution.

(Signed) D. J. HART.

Subscribed and sworn before me this 29th day of April, 1882.
(Signed) DON A. PARDEE,
Judge U. S. Circuit Court, Eastern District of Louisiana.

Bond approved.
(Signed) DON A. PARDEE,
Judge U. S. Circuit Court, Eastern District of Louisiana.

153 *Order: Motion to quash refused.—Extract from minutes, April term,* 1882.

NEW ORLEANS, *Saturday, May 27th,* 1882.

Court met pursuant to adjournment.
Present, Hon. Don A. Pardee, circuit judge.
" " E. C. Billings, district judge.

JUDAH HART
vs.
CITY OF NEW ORLEANS. } No. 9662.

This cause came on to be heard before his honor the circuit judge and his honor the district judge, on the motion of the defendant to quash the execution herein, filed April 15th, 1882, and was argued by counsel.

On consideration whereof it is ordered that the said motion be refused.

Judgment on motion to quash.—Extract from judgment book, April term 1881.

NEW ORLEANS, *Saturday, May 27th*, 1882.

Court met pursuant to adjournment.
Present, Hon. Don A. Pardee, circuit judge.

JUDAH HART
vs.
CITY OF NEW ORLEANS. } No. 9662.

The attention of the court having been called to the informal de-
154 cree entered on the minutes of the 27th of May, 1882, it is ordered that the following decree be entered nunc pro tunc.

This cause came on to be heard on the motion of the defendant, the City of New Orleans, filed April 15th, 1882, to quash the fi. fa. herein issued, and to quash the levy thereunder made on the sugar-shed warehouses and certain railroad-bonus funds, and was argued by counsel; and the parties having filed a stipulation in writing, waiving the intervention of a jury, and submitted the cause to the court upon the issues of fact, as well as of law, and the court having considered the evidence, and being fully advised in the premises, finds both the issues of fact and of law raised by the pleadings in favor of Judah Hart, the defendant, in the rule and motion. It is ordered, adjudged, and decreed that the said motion of the City of New Orleans be denied, and that her demand to quash the execution and the levy thereunder made on the said sugar-shed warehouses, and the said bonus funds be rejected with costs.

Judgment rendered May 27th, 1882.
Judgment signed June 2d, 1882.
(Signed) DON A. PARDEE, *Judge.*

155 *Petition and order for writ of error.—Filed June 12th*, 1882.

Circuit court of the United States, fifth circuit & eastern district of La.

JUDAH HART
vs.
CITY OF NEW ORLEANS. }

To the hon. the judges thereof:

The petition of the City of New Orleans, through Joseph A. Shakespeare, appearing through undersigned counsel, respectfully shows that she is aggrieved by the judgment herein rendered, on the rule taken by her, filed April 15th, 1882, to quash the writs of fi. fa. and the seizure of certain property thereunder, on May 27th, 1882, signed June 2d, 1882; and is informed and believes that there is error in said judgment to her prejudice, and she is desirous of having and prosecuting therefrom a writ of error to the hon. the Supreme Court of the United States.

Wherefore petitioner prays that a writ of error be allowed her herein from said judgment, returnable to the hon. the Supreme Court of the United States on the 2d Monday of Oct., 1882, on giving bond, and other-

wise complying with requisites of the law; and she prays that
156 Judah Hart be cited, as defendant in writ, and for general relief, etc.

(Signed) C. F. BUCK, *City Att'y.*
WYNNE ROGERS,
Of Counsel.

Order.

Let a writ of error issue herein as prayed for, and returnable in the honorable Supreme Court on the first day of next term, on petitioner giving bond in the sum of two hundred and fifty dollars.

And let the same operate as a supersedeas on giving bond with security in the additional sum of ten thousand dollars, it being understood that the marshal will receive the rents of the property seized pending the writ of error.

June 12th, 1882.

(Signed) DON A. PARDEE, *Judge.*

Bond for writ writ *of error.—Filed June 29th*, 1882.

Know all men by these presents, that we, the City of New Orleans, as principal, and William Fagan, as surety, are held and firmly bound unto Judah Hart, and the U. S. marshal of the U. S. circuit court
157 for the 5th circuit and eastern district of La., J. R. G. Pitkin, in the full sum of two hundred and fifty dollars, to be paid to the said Judah Hart and said marshal, each or either, the full amount, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents. Sealed with our seals, and dated this 28 day of June, in the year of our Lord one thousand eight hundred and eighty-two.

Whereas lately at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the eastern district of Louisiana, in a suit depending in said circuit court, wherein Judah Hart is plaintiff and the City of New Orleans defendant, judgment was rendered against defendant, the said City of New Orleans, signed on June 2d, 1882, dismissing her rule to quash fi. fa. and seizure of certain property described in said rule, having obtained a writ of error and filed a copy thereof in the clerk's
158 office of the said circuit to reverse the judgment in the aforesaid suit, and a citation directed to the said Judah Hart and U. S. marshal, citing and admonishing them to be and appear at the Supreme Court of the United States, to be holden at Washington the second Monday of October next:

Now the condition of the above obligation is such, that if the said City of New Orleans shall prosecute her writ to effect and answer all damages and cost if she fail to make her plea good, then the above obligation to be void, else to remain in full force and virtue.

(Signed) JOS. A. SHAKESPEARE, *Mayor.* [L. S.]
(Signed) WM. FAGAN, [L. S.]

Bond approved.

(Signed) DON A. PARDEE, *Judge.*

Bond for writ of error.—Filed July 13th, 1882.

Know all men by these presents that we, the City of New Orleans, as principal, & J. H. Menge, Jno. J. Brown, & J. H. Menge, as sureties in solido, are held and firmly bound unto Judah Hart and J. R. G. Pitkin, marshal, in the full and just sum of ten thousand two hundred
159 and fifty dollars, to be paid to the said Judah Hart and J. R. G. Pitkin, U. S. marshal, their certain attorney, executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents. Sealed with our seals and dated the 6th day of July, in the year of our Lord one thousand eight hundred and eighty-two.

Whereas lately at a circuit court of the United States, fifth circuit, holding sessions in and for the the eastern district of Louisiana, fifth circuit, in a suit depending in said circuit court, wherein Judah Hart is plaintiff and the City of New Orleans is defendant, No. 9662, a judgment was rendered, May 27th, 1882, signed June 2d, 1882, against the City of New Orleans, dismissing a rule to quash execution and seizure of certain property, and the said City of New Orleans having obtained a writ of error and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said Judah Hart and J. R. G. Pitkin, citing and admonishing them
160 to be and appear at the Supreme Court of the United States to be holden at Washington, the second Monday of October next:

Now the condition of the above obligation is such, that if the said City of New Orleans shall prosecute her writ to effect and answer all damages and costs if she fail to make her plea good, then the above obligation to be void, else to remain in full force and virtue.

(Signed) JOS. A. SHAKESPEARE, *Mayor.* [L. S.]
J. H. MENGE. [L. S.]
JOHN J. BROWN. [L. S.]
J. W. TOBIN. [L. S.]

Accepted.

(Signed) DON A. PARDEE, *Judge.*

JULY 10, 1882.

UNITED STATES OF AMERICA,
District of Louisiana, ss:

Personally appeared John H. Menge, John J. Brown, and John W. Tobin, who, being duly sworn, depose and say that they are the sureties on the within bond; that they reside in the parish of Orleans, State of Louisiana, and are worth each the full sum of ten thousand two
161 hundred and fifty dollars over and above all their debts and liabilities and property exempt from execution.

(Signed) J. H. MENGE.
JOHN J. BROWN.
J. W. TOBIN.

Subscribed and sworn before me this 6th day of July, 1882.

(Signed) ANDREW HERO, *Not. Pub.*

Statement of facts.—Received and filed July 22d, 1882.

U. S. circuit court.

JUDAH HART
vs.
CITY OF NEW ORLEANS. } No. 9662.

Statement of facts found by the court in the above cause, on motion to quash levy and execution.

1st. Plaintiff obtained against the defendant in this court a judgment absolute in form and terms, save and except that it was provided in the judgment that in case the plaintiff should apply for a mandamus to compel the levy and collection of a tax to pay it he should be bound by all the limitations upon the taxing power of the defendant that were in
162 existence at the time the contracts sued on were made with the defendant.

2d. This judgment has never been registered under the provisions of act No. 5, of 1870, which act is made part hereof. There are registered under that act judgments of the State court exceeding $600,000 in amount, which would be entitled to payment prior to plaintiff's judgment if the same had been registered at the time it was rendered. The city has not since 1875 appropriated more than $20,000 per annum towards the payment of such judgments, not enough to pay the interest on those already registered.

3d. Plaintiff issued a fi. fa. under his judgment and seized the following property:

(1st.) By garnishment proceedings in due form of law he seized in the hands of the Orleans Railroad Company and the Canal and Claiborne Railroad Company certain sums due to the defendant by said companies as a bonus for each passenger carried on their cars, said bonus having been agreed to be paid by the said companies as the purchase price of the privilege or franchise of building and operating railroads through streets of the city.

163 (2d.) By garnishment process in due form of law in the hands of the Sugar Shed Company, certain sums due by it to the defendant as ten per cent. of the gross profits made by the company on the storage of sugar and molasses in the warehouses constructed by the company on the property of the city and described below.

(3d.) In due form of law all the right, title, and interest of the defendant in and to a certain leasehold contract, by which the city of New Orleans gave the Sugar Shed Company, or its assignor, the right to construct warehouses upon the property of the city described below for the purpose of storing sugar and molasses in them for twenty-five years, the interest of the city in said contract being (*a*) ten per cent. of the gross receipts of such storage; (*b*) the right of reversion to one-half of the building and structures at the end of the lease.

(4th.) In due form of law certain squares of ground belonging to the city of New Orleans jure alluvianis, of which she had given the
164 Sugar Shed Company, or its assignor, exclusive possession and con-

trol, with permission to erect thereon certain warehouses for the storage of sugar and molasses.

4th. As regards the bonus due by the railroads as the purchase price of their franchises the court finds as a fact that they do not and never did constitute a part of the public revenues of the city. They never were even put upon the city budget.

5th. As regards the 10 per cent. of its gross receipts due by the Sugar Shed Company for a portion of the year 1882, which was seized by garnishment, the court finds as a matter of law and fact that it did not constitute a part of the public revenues of the city not liable to seizure, although the sum so due was put upon the budget for the year 1882 as part of the estimated receipts of that year.

6th. As regards the leasehold rights of the city mentioned above the court finds as a fact that the same is not public property dedicated
165 to a public use, but that it falls within that category of property belonging to a municipal corporation which is liable to seizure.

6th. As regards the five squares of ground mentioned above the court finds the following facts:

(*a.*) That they are located as appears by the map hereto annexed marked A.

(*b.*) That they now form no part of the public landing, having been specially excluded therefrom by an ordnance of the city.

(*c.*) That they are not necessary for the purposes of commerce.

(*d.*) That the Sugar Shed Company under their contract with the city have exclusive possession and control of those five squares.

(*e.*) That said company pays the city one-tenth of the gross profits made by it in the storage of sugar and molasses.

(*f.*) That said warehouses are used for a public purpose to no greater or further extent than any other warehouse in the city of New Orleans.

(*g.*) That the history of the said squares of ground is as follows:
166 All of the property situated on the map between Canal, Peters street, and the river is alluvian, which within the last one hundred and twenty-five years has formed in front of the original city of New Orleans. This alluvian has projected so far as from time to time to make the "levee," as it is called, or more properly the "public landing," very much broader than was needed for the purposes of commerce.

In times past the whole of this space between Canal, Peters st., and the river has formed part of said public landing.

As this alluvian grew (and it is still growing) the city from time to time has divided it up into squares, as shewn on the map, and sold it to private individuals for private purposes.

In like manner, prior to 1869, the whole space now occupied by the sugar shed warehouses formed a part of the levee, a public landing, and was exclusiv'ly devoted to the landing of sugar and molasses.

167 In that year the city laid off the squares now occupied by the said warehouses, and entered into a contract for twenty-five years with one F. B. Fleitas, the assignor of the Sugar Shed Company, to erect warehouses thereon for the storage of sugar and molasses, the city binding herself during the term of the contract to keep the sugar landing at its then location in front of said squares, and to give Fleitas exclusive possession and control of the same, and Fleitas binding himself to pay to

the city ten per cent. of the gross receipts from the storage of sugar and molasses, and to give the city the right of reversion of one-half of the structures erected by him on the squares at the end of the twenty-five years, the option remaining in the city at the end of the twenty-five years to extend the contract for 15 years longer, at the end of which time the whole of said structures were to become the absolute property of the city.

(*h.*) That since the leasing of said squares to Fleitas and the erection of said sugar sheds the sugar landing—i. e., the place where the
168 steamboats deposit their cargoes—is somewhat cramped, and in the busy season is hardly large enough for that purpose unless the city ordinance which prohibits the leaving of sugar and molasses on the landing more than 24 hours is rigidly enforced.

(*i.*) That in point of value and importance the sugar and molasses brought to this port stands second only in rank.

7th. That in the above facts plaintiff is entitled to have execution upon all the property levied upon.

And it is ordered that the clerk file the foregoing with the record of the case as the statement of facts found therein, of the date that the same comes to his office, but that the same shall have (so far as the authority of the circuit judge may go in the present state of the case) the same effect as if filed on the day the judgment was rendered.

(Signed) DON A. PARDEE,
Circuit Judge.

169 *Bond for writ of error.—Filed July 26th*, 1882.

Know all men by these presents, that we, the City of New Orleans as principal, and Jos. A. Shakspeare as surety, are held and firmly bound unto Judah Hart in the full and just sum of two hundred and fifty dollars, to be paid to the said Judah Hart, his certain attorney, executors, administrators, or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 20th day of July, in the year of our Lord one thousand eight hundred and eighty-two.

Whereas lately at a circuit court of the United States, fifth judicial circuit, holding sessions in and for the eastern district of Louisiana, in a suit depending in said circuit court, No. 9662 of the docket thereof, wherein Judah Hart is plaintiff and the City of New Orleans is defendant, a judgment was rendered against said defendant on the 3d day of March
170 and signed on the 4th day of March, 1882, and the said City of New Orleans having obtained a writ of error and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said Judah Hart, citing and admonishing him to be and appear at the Supreme Court of the United States, to be holden at Washington the second Monday of October next:

Now, the condition of the above obligation is such that if the said City of New Orleans shall prosecute her writ to effect, and answer all damages

and cost if she fail to make her plea good, then the above obligation to be void; else to remain in full force and virtue.

(Signed) JOS. A. SHAKESPEARE, *Mayor.* [L. S.]
JOS. A. SHAKESPEARE, *Surety.* [L. S.]

Bond approved.

(Signed) DON A. PARDEE, *Judge.*

UNITED STATES OF AMERICA,
District of Louisiana, ss:

171 Personally appeared Jos. A. Shakespeare, who, being duly sworn, deposes and says, that he is the surety on the within bond; that he resides in New Orleans, La., and is worth the full sum of two hundred and fifty dollars over and above all his debts and liabilities and property exempt from execution.

(Signed) JOS. A. SHAKSPEARE.

Subscribed and sworn before me this 20th day of July, 1882.

(Signed) W. O. HART.

Agreement of counsel relative to transcript.—Filed Sept'r 18th, 1882.

JUDAH HART
vs.
THE CITY OF NEW ORLEANS.

It is hereby agreed between counsel in this case that the various legislative enactments and the constitutional amendment of 1874, recited in the bills of exception herein, and made part thereof, shall not be copied in the transcript, but shall be supplied in printed form or pam-
172 phlet, which shall or may be filed at any time at or before the trial of the cause in the Supreme Court.

The acts embraced are:

1st. Act No. 5, acts of 1870, extra session.

2d. Act No. 73, acts of 1872.

3d. Act 31, acts of 1876.

4th. Amendment to the constitution of 1868, adopted in 1874, and which went in operation on the 1st of January, 1875.

(Signed) E. H. FARRAR,
Att'y for Judah Hart.

Agreement.—Filed September 20th, 1882.

U. S. circuit court, eastern dist. La.

JUDAH HART
vs. No. 9662.
CITY OF NEW ORLEANS.

On motion to quash fi. fa., etc., it is agreed that act No. 5, acts of 1870, E. S., legislature of La., made part of the statement of facts, shall not be copied in the transcript, but filed and used in the Supreme Court in printed pamphlet or annexed to brief, etc.

(Signed) E. H. FARRAR,
173 *Attorney for Judah Hart.*

(Signed) C. F. BUCK, *City Att'y.*

174 UNITED STATES OF AMERICA,

Circuit court of the United States, fifth circuit and eastern district of Louisiana.

CLERK'S OFFICE.

I, Frank A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, do hereby certify that the foregoing 172 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had on the trial of the case of Judah Hart vs. City of New Orleans and Canal and Claiborne Streets Railroad Co., garnishees, No. 9662 of the docket of the said court.

Witness my hand and the seal of said court at the city of New Orleans, this 21st day of Sept'r, A. D. 1882.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, Don A. Pardee, United States judge for the eastern district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was at the time of signing said certificate, and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand at the city of New Orleans in said district, this 21st day of Sept'r, A. D. 1882.

[SEAL.] DON A. PARDEE, *Judge.*

175 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the eastern district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between Judah Hart, plaintiff in suit No. 9662, and the City of New Orleans, defendant, a manifest error hath happened, to the great damage of the said defendant, the City of New Orleans, as by her complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to laws and customs of the United States, should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said

Supreme Court of the United States, this 14th day of March, in the year of our Lord one thousand eight hundred and eighty-two.

[SEAL.] F. A. WOOLFLEY,
Clerk of the United States Circuit Court
for the District of Louisiana.

(Indorsed:) United States circuit court. No. 9662. City of New Orleans, plaintiff in error, versus Judah Hart, defendant in error. Writ of error. Filed March 14th, 1882. T. V. Coupland, d'y cl'rk.

176 Supreme Court of the United States. Of the October term.

JUDAH HART
vs.
THE CITY OF NEW ORLEANS.

Afterwards, to wit, on the 9th day of October, of the same term, before said court, at the city of Washington, came The City of New Orleans, plaintiff in error, & says that in the record & proceedings aforesaid, and also in giving the judg't aforesaid, there is error, especially in the following particulars, to wit:

1st. In various matters of the charge delivered by the court to the jury, which are expressly set forth in bills of exception, duly approved in the transcript, and stated here only for reference.

2nd. There is error in the ruling of the court discharging the motion to remand the cause to the State court—said motion, order discharging same, and all matters necessary to the decision thereof are of record herein—and the court especially erred in holding that an affidavit for removal of the cause from the State to Federal court, under sec. 639, R. S., subdivision 3, signed and sworn to before the suit is "pending" is the affidavit
177 required by said act; and the hon. the circuit court could not and did not acquire jurisdiction under an affidavit which was wholly and radically invalid, and bearing on its face the physical impossibility of its truth.

There is also error in the amendment and rendition of an amended judgment on the rule for a new trial, and the entering of a pretended remittitur; the hon. the judge a quo should either have unconditionally granted or refused the new trial asked.

And the said City of New Orleans, through undersigned counsel, prays that the judgment aforesaid may be reversed, annulled, and altogether held for naught, and that he may be restored to all things which he hath lost by occasion of the said judgment.

CHAS. F. BUCK,
City Att'y.
WYNNE ROGERS,
Of Counsel.

178 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the eastern district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the

judgment of a plea which is in the said circuit court before you, or some of you, between Judah Hart, plaintiff, and the Canal and Claiborne Streets Railroad Company, garnishee in the suit or cause of Judah Hart, plaintiff, against the City of New Orleans, defendant, No. 9662 of the docket of said circuit court, a manifest error hath happened, to the great damage of the said Canal and Claiborne Streets Railroad Company, garnishee in said cause, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 28th day of April, in the year of our Lord one thousand eight hundred and eighty-two.

[SEAL.] F. A. WOOLFLEY,
Clerk of the United States Circuit Court
for the Eastern District of Louisiana.

(Indorsed:) United States circuit court. No. 9662. The Canal & Claiborne Street Railroad Company, plaintiff in error, versus Judah Hart, defendant in error. Writ of error. Filed April 28, 1882. T. V. Coupland, d'y clerk.

179 Supreme Court of the United States, of the October term of the Supreme Court of the United States, A. D. 1882.

JUDAH HART
vs.
THE CITY OF NEW ORLEANS, THE CANAL & Claiborne Streets Railroad Company, plaintiff in error.

Afterwards, to wit, on the 9th day of October, A. D. 1882, of this same term, before said court, at the city of Washington, came the said Canal and Claiborne Streets Railroad Company, garnishee and plaintiff in error, and says that, in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error in this, to wit, that the supplemental petition of the said Judah Hart, plaintiff in said cause of Judah Hart, vs. The City of New Orleans, and the matters therein and the proceedings thereon and thereunder, are not sufficient in law for the said Judah Hart to have and maintain his action against the said Canal & Claiborne Streets Railroad Company, plaintiff in error, in said supposed garnishee proceedings.

And that there is also error in this, to wit, that, by the record
180 aforesaid, it appears that the judgment aforesaid in the form aforesaid was given for said Judah Hart against the said Canal and

Claiborne Streets Railroad Company, as garnishee, whereas by the law of the land said judgment ought to have been for the said Canal & Claiborne Streets Railroad Company and against the said Judah Hart.

And that there is also error in this, to wit, that all of the proceedings and pleadings in said supplemental garnishee proceedings against the said plaintiff in error ought to have been held and adjudged void, irregular, and insufficient to warrant and sustain any judgment against said plaintiff in error, in manner and form as the same are of record, whereas the same and the said judgment ther'on were held erroneously to be sufficient and adequate in law to warrant said judgment and execution.

And that there is also error in this, to wit, that at the time when judgment was rendered against the Canal & Claiborne Streets Railroad Company, the City of New Orleans, the alleged defendant in judgment and execution, upon which said supposed garnishee proceedings are pred-

181 icated, was not made a party to said supposed garnishee proceedings, nor was there any due and lawful citations of the defendants named in said supplemental petition as by the law of the land there should have been.

And that there is also error in this, to wit, that the said City of New Orleans, the original defendant, was not made a party to said supplemen'tal proceedings in any lawful manner by any lawful service or citation, and the said plaintiff in error, The Canal & Claiborne Streets Railroad Company, is in no manner by said judgment protected against the City of New Orleans in the event of proceedings by said City of New Orleans against said plaintiff in error for the same demand.

And that there is also error in this, to wit, that at the time when the circuit court of the United States for the eastern district of Louisiana rendered said judgment against said plaintiff in error there was no lawful issue of fact or law made or existing between the said Judah Hart, or any other party to the record, on the allegations and demands set forth in said supplemental petition, either by default, exception, or answer to said supplemental petition, as in law there should have been.

182 And that there is also error in this, to wit, that at the time when the judgment aforesaid was made and entered, there was before the court for its action & judgment simply a motion on behalf of the said Judah Hart that the answers of the said plaintiff in error to the interrogatories on facts and articles be taken as confessed in manner and form as the same were made and of record, and that it appears from the record ther'of that if said answers be taken as true in manner and form as said answers are of record, there should have been judgment in favor of the said plaintiff in error, and against the said Judah Hart.

And that there is also error in this, that as shown by the record aforesaid, and the answers to interrogatories on facts and articles aforesaid, if there in fact was any indebtedness by the said Canal & Claiborne Streets Railroad Company to the said City of New Orleans by reason of any tax upon passengers, the same was a part and portion of the public revenues of the city of New Orleans, and not liable in law to seizure upon exe'ution or by garnishee proceedings to satisfy any judgment of the char'cter of the said judgment of the said Judah Hart against the city of New Orleans, the said supposed debt being a part or portion of the public revenues of said city of New Orleans, if said debt had any existence.

183 And that there is also error in this, to wit, that there was judgment against the said Canal & Claiborne Streets Railroad Company, plaintiff in error, on its said motion for the arrest of any judgment upon the record and verdict in this cause as appears by the record aforesaid, whereas by the law of the land there should have been judgment on said motion in favor of the said Canal & Claiborne Streets Railroad Company, and said proceedings and judgment should have been arrested as prayed for in said motion.

And the said Canal & Claiborne Streets Railroad Company prays that the judgment aforesaid, for the errors aforesaid and other errors in the record and proceedings aforesaid, may be reversed, annulled, and altogether held for nothing, and that it may be restored to all things which it hath lost by occasion of said judgment, &c.

J. R. BECKWITH,
Attorney for Plaintiff in Error.

184 UNITED STATES OF AMERICA, *ss.:*

The President of the United States, to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana—greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before you, or some of you, between Judah Hart, as plaintiff, and the City of New Orleans, as defendant, a manifest error hath happened, to the great damage of the said City of New Orleans, in the judgment rendered May , 1882, signed June 2d, 1882, dismissing motion & rule to quash fi. fa. and seizure under it, as by her complaint appears, we, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable , Chief Justice of the said Supreme Court of the United States, this 28th day of June, in the year of our Lord one thousand eight hundred and seventy.

F. A. WOOLFLEY,
Clerk of the United States Circuit Court for the Eastern District of Louisiana.

(Indorsed:) United States circuit court. No. 9662. Judah Hart versus City of New Orleans. Writ of error. Filed June 29, 1882. T. V. Coupland, d'y cle'k.

185 JUDAH HART
vs.
CITY OF NEW ORLEANS. } No. 9662. On motion to quash e
tion & release seizure, etc.

Supreme Court of the United States. Of the October term, 1882.

Afterwards, to wit, on the 9th day of Oct., 1882, at said October ter
before the justices of the Supreme Court of the United States, comes th
said City of New Orleans, plaintiff in error, from the judgment of th
circuit court of the United States, on motion to quash execution, etc., and
says that in record and proceedings had on said motion to quash,
aforesaid, there is manifest error in this, to wit:

1st. There is error in the ruling of the court that the judgment herein
on which the writ of execution issued is an absolute, unqualified judgment;
the judgment, on its face, conveying certain conditions and limitations as
to the mode of execution or enforcing payment thereon.

2nd. The court erred in holding that act No. 5 of the acts of 1870, E.

186 S. general assembly of La., which prohibits the issuance of the writ
of fi. fa. against the City of New Orleans is *is* not binding upon
the federal courts.

3rd. The court erred in holding that it was not necessary to register
plaintiff's judgment in the office of the administrator of accounts, in ac-
cordance with act No. 5, acts of 1870 aforesaid, as a prerequisite to pro-
cess in execution.

4th. The court erred in holding that the bonus or boni paid by city
street-railroads for the privilege of operating their roads were not public
revenues, protected as such from seizure by ordinary creditors.

5th. Similarly, in regard to bonus paid by the Sugar-Shed Company;
and the court further specially erred in holding that the ground on which
the sugar-sheds are erected, the sugar-sheds themselves, the leaseholds of
the city, with right of acquiring the buildings, are not public property,
nor property dedicated and used for a public service or purpose, and as
such exempt from seizure.

And the said City of New Orleans, through undersigned counsel, prays
that said judgment may be reversed, annulled, and altogether held for
nought, and that he may *she* be restored to all things which she had lost by
occasion of said judgment.

C. F. BUCK, *City Att'y,*
WYNNE ROGERS,
Of Counsel.

187 THE UNITED STATES OF AMERICA:

Circuit court of the United States, eastern district of Louisiana.

The President of the United States to Judah Hart, greeeting:

You are hereby cited and admonished to be and appear at a Supreme
Court of the United States, to be holden at the city of Washington on
the second Monday of October next, pursuant to a writ of error filed in
the clerk's office of the circuit court of the United States for the fifth cir-
cuit and eastern district of Louisiana, wherein The Canal and Claiborne
Streets Railroad Company is plaintiff in error and you are defendant in

error, to show cause, if any there be, why the judgment rendered against the said Canal and Claiborne Street Railroad Company, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 29th day of April, in the year of our Lord one thousand eight hundred and eighty-two.

DON A. PARDEE,
Circuit Judge.

188 (Indorsed:) R. United States circuit court. No. 9662. The Canal & Claiborne Streets Railroad Company, g'rn'shee, pl'ff in error, vs. Judah Hart, def't in error. Citation.

Marshal's return.

Received Apr. 29, 1882, by the U. S. marshal, and on April 29th, 1882, I served a duplicate original of the within citation in error on Judah Hart, defendant in error herein, by leaving the same in the hands of A. G. Brice, esq., in the city of New Orleans, one of the attorneys of record for the aforesaid defendant in error herein, at the same time informing of the nature of said citation.

And on the same day, month, and year I left a duplicate original of the within citation in error in the hands of Joseph A. Shak'spear, in the city of New O'le'ns, at the same time informing him of the nature of said citation.

E. S. CURRY,
D'y U. S. Marshal for Eastern District of La.

Personally appeared before me E. S. Curry, a lawful deputy of J. R. G. Pitkin, U. S. marshal for the eastern district of Louisiana, and makes oath that he served true copies of the within citation in error on the persons n'med in said return, and in the m'nner set forth in his official retu'n herein.

E. S. CURRY,
D'y U. S. Marshal for Easte'n D'st. of La.

Subscribed and sworn before me May 1st, 1882.

F. A. WOOLFLEY,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

189 THE UNITED STATES OF AMERICA:

Circuit court of the United States, eastern district of Louisiana.

The President of the United States to Judah Hart and J. R. G. Pitkin, U. S. marshal for the eastern district of Louisiana, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit

and district of Louisiana, wherein The City of New Orleans is plaintiff in error, and you and each of you are defendants in error, to show cause, if any there be, why the judgment rendered against the said City of New Orleans, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 29th day of June, in the year of our Lord one thousand eight hundred and eighty-two.

DON A. PARDEE, *Judge.*

190 (Indorsed:) R. Judah Hart, J. R. G. Pitkin, U. S. marshal. United States circuit court. No. 9662. City of New Orleans, plaintiff in error, vs. Judah Hart and J. R. G. Pitkin, U. S. marshal, defendants in error. Citation.

Marshal's return.

Received Jul. 6, 1882, by the U. S. marshal, and on July 8th, 1882, I served a true copy of the within citation in error on Judah Hart, defendant in error, by handing the same to E. H. Farrar, esq., att'y of record, in person in the city of New Orleans.

E. S. CURRY,
Dy U. S. Marshal Easter. D'st. of Louisiana.

Service hereof is accepted.

J. R. G. PITKIN,
U. S. M., E. D. of La.,
By ED. S. WURZBURGER,
Deputy Marshal.

AUGUST 1ST, 1882.

Personally appeared before me E. S. Curry, a lawful deputy of J. R. G. Pitkin, U. S. marshal for the eastern district of Louisiana, and makes oath that he served a true copy of the within writ of error on the defendant in error herein as set forth in his official return herein.

E. S. CURRY,
Dy U. S. Marshal for Eastern D'st. of La.

191 THE UNITED STATES OF AMERICA.

Circuit court of the United States, eastern district of Louisiana.

The President of the United States to Judah Hart, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein The City of New Orleans is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said City of New Orleans, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 26th day of July, in the year of our Lord one thousand eight hundred and eighty-two.

DON A. PARDEE,
Circuit Judge.

192 (Indorsed:) R. United States circuit court, eastern district of Louisiana. No. 9662. City of New Orleans, plaintiff in error vs. Judah Hart, defendant in error. Citation.

Marshal's return.

Received Jul. 31, 1882, by the U. S. marshal, and on August 2d, 1882, I served a copy of the within citation on E. H. Farrar, esq., attorney of record of Judah Hart, defendant in error, by handing the same to him in person in the city of New Orleans, the said Judah Hart being absent from the district.

August 2d, 1882.

JOS. DEVONSHIRE,
D'y Marshal.

STATE OF LOUISIANA,
City of New Orleans, ss:

Joseph Devonshire, deputy marshal, who, being duly sworn, says that he served a copy of the within citation on E. H. Farrar, esq., attorney of record for said Judah Hart, defendant in error, as will more fully appear by reference to the return on the reverse hereof.

JOSEPH DEVONSHIRE.

Subscribed and sworn before me August 3d, 1882.

T. V. COUPLAND,
Commissioner United States Circuit Court,
Eastern District of Louisiana.

(Indorsement on cover:) No. 942. The City of New Orleans, plaintiff in error, vs. Judah Hart. No. 943. The Canal and Claiborne Streets Railroad Company, garnishees, plaintiff in error, vs. Judah Hart; and No. 944. The City of New Orleans, plaintiff in error, vs. Judah Hart. E. Louisiana C. C. U. S. Filed 29th September, 1882.

No. 283.

EDWARD CLAIBORNE STERRETT, GARDINIER, PLAINTIFF IN ERROR,

vs.

JUDAH HART, DEFENDANT IN ERROR.

In the Circuit Court of the United States for the District of Louisiana.

BRIEF OF PLAINTIFF IN ERROR ON MOTION TO DISMISS OR AFFIRM.

JAS. B. ECKERT,

Counsel for the Canal and Clai[illegible] R.R. Co., Plaintiff [illegible]

[illegible] and Printer, 26 Camp Street.

In the Supreme Court of the United States.

No. 943.

THE CANAL AND CLAIBORNE STREETS RAILROAD COMPANY, GARNISHEES, IN THE SUIT OF JUDAH HART *vs.* THE CITY OF NEW ORLEANS, PLAINTIFF IN ERROR,

versus

JUDAH HART, DEFENDANT IN ERROR.

On Motion to Dismiss or Affirm.

Reasons why Motion to Dismiss or Affirm should be refused.

It is not probable that the present century will furnish a more marked instance of flagrant abuse of the third sub-division of article 639 of the Revised Statutes, or of the provisions of rule 6 of the rules of this court, than is presented and disclosed in the record and proceedings in this cause.

In 1874, to check the extravagance of the government of the city of New Orleans, the State, in due form, adopted an amendment to its constitution as follows:

"The city of New Orleans shall not hereafter increase her "debt in any manner or form, or under any pretext; and after "the 1st of January, 1875, no evidence of indebtedness or "warrant for the payment of money shall be issued by any "officer of said city, except against cash actually in the treas-"ury."

The same amendment denounced a penalty of imprisonment of not less than two or more than ten years, and fine not less than three or more than ten thousand dollars. *Session Laws of 1874, page 56.*

In the case of the *New Orleans Tax-Payers' Association vs. the City of New Orleans, 33 A. 567*, the Supreme Court of the State declared this amendment operative from the 2d of November, 1874, until the adoption of the present new constitution, on January 1st, 1880, and adjudged that it operated upon all parties dealing with the city of New Orleans; that every person dealing with the city was bound by its condition, and could get no obligation from the city beyond a claim on the revenues of the current year during which they were dealing with the city; that the city could not issue any evidence of indebtedness or warrant not drawn "against cash actually in the treasury." When strenuously pressed, on application for rehearing, to change their ruling, the court affirmed the same in all particulars.

Therefore, at and before the time of the institution of this suit, the settled law of the State was, that all pretended ordidinances and appropriations referred to in the plaintiff's petition (record, page 4 *et seq.*) were void, and could not be merged in any general judgment against the city; that all of the pretended ordinances, between November 2d, 1874, and January 1st, 1880, were void, and that all warranting under them, except against actual funds, *was a felony.*

This being the declared law of the State, Judah Hart (if he be the real party in interest), claiming to be a citizen of the State of New York, claims to have gathered up a lot of tainted ordinances, alleging that they had been transferred to him by the parties named in the ordinances, together with "*their right to obtain payment of the same.*"

He was unable to find any original jurisdiction in any federal court for a suit, contemplated by him, based on the tainted ordinances, because his trash, whatever merit he might claim for it, could not be classed either as "promissory notes, negotiable under the law merchant," or "bills of exchange," under the jurisdiction act of March 3d, 1875. He therefore invited cunning to his aid, and, on the 4th day of November, 1881,

filed the petition, set forth on page 2 of the printed record, in the Civil District Court for the parish of Orleans. On the same day citation was served on the city, and on the same day Hart filed in the State court a petition for removal (record, page 22) to the federal court, under the "local prejudice" clause of article 639, R. S.

In his petition he referred to the article by simple reference to its number and the third sub-division thereof. The petition contained no averment of belief or reason for belief in any prejudice or local influence, but simply refers to some affidavit alleged to be filed with the petition. The *next day* —to-wit: on the 5th of November, 1881—he filed an alleged affidavit (record, page 22), purporting to have been made before one George R. Jaques, "Commissioner of Deeds of Louisiana," No. 252 Broadway, New York, sworn to on the 25th day of October, 1881—ten days before this suit was instituted or had any existence, and ten days before any judicial action was had in this controversy in any court: that is, *one day after* he filed his removal petition he filed in the State court an affidavit made *ten days before his suit had any existence*, that he believed, and had reason to believe, prejudice and local influence existed in Louisiana to such extent as to injure or imperil his rights. Upon this showing and a bond the court made an order declaring the case removed to the Federal Court for the Eastern District of Louisiana, at its November term, 1881 (record, page 23). So far all was triumph.

The next term of the federal court commenced on the 7th of November, 1881. Hart, on that day, went in the federal court, and on the *ex parte* representation of counsel obtained an enlargement of the time to file the transcript until the 14th of November, 1881 (record, page 1). The transcript appears, however, to have been filed on the 7th of November, 1882, but this is doubtless one of the numberless blunders occurring all through the printed record. Probably the filing was November 7th, 1881. A motion to remand was made, and failed. A trial

In the case of the *New Orleans Tax-Payers' Association vs. the City of New Orleans, 33 A. 567*, the Supreme Court of the State declared this amendment operative from the 2d of November, 1874, until the adoption of the present new constitution, on January 1st, 1880, and adjudged that it operated upon all parties dealing with the city of New Orleans; that every person dealing with the city was bound by its condition, and could get no obligation from the city beyond a claim on the revenues of the current year during which they were dealing with the city; that the city could not issue any evidence of indebtedness or warrant not drawn "against cash actually in the treasury." When strenuously pressed, on application for rehearing, to change their ruling, the court affirmed the same in all particulars.

Therefore, at and before the time of the institution of this suit, the settled law of the State was, that all pretended ordinances and appropriations referred to in the plaintiff's petition (record, page 4 *et seq.*) were void, and could not be merged in any general judgment against the city; that all of the pretended ordinances, between November 2d, 1874, and January 1st, 1880, were void, and that all warranting under them, except against actual funds, *was a felony.*

This being the declared law of the State, Judah Hart (if he be the real party in interest), claiming to be a citizen of the State of New York, claims to have gathered up a lot of tainted ordinances, alleging that they had been transferred to him by the parties named in the ordinances, together with "*their right to obtain payment of the same.*"

He was unable to find any original jurisdiction in any federal court for a suit, contemplated by him, based on the tainted ordinances, because his trash, whatever merit he might claim for it, could not be classed either as "promissory notes, negotiable under the law merchant," or "bills of exchange," under the jurisdiction act of March 3d, 1875. He therefore invited cunning to his aid, and, on the 4th day of November, 1881,

filed the petition, set forth on page 2 of the printed record, in the Civil District Court for the parish of Orleans. On the same day citation was served on the city, and on the same day Hart filed in the State court a petition for removal (record, page 22) to the federal court, under the "local prejudice" clause of article 639, R. S.

In his petition he referred to the article by simple reference to its number and the third sub-division thereof. The petition contained no averment of belief or reason for belief in any prejudice or local influence, but simply refers to some affidavit alleged to be filed with the petition. The *next day* —to-wit: on the 5th of November, 1881—he filed an alleged affidavit (record, page 22), purporting to have been made before one George R. Jaques, "Commissioner of Deeds of Louisiana," No. 252 Broadway, New York, sworn to on the 25th day of October, 1881—ten days before this suit was instituted or had any existence, and ten days before any judicial action was had in this controversy in any court: that is, *one day after* he filed his removal petition he filed in the State court an affidavit made *ten days before his suit had any existence*, that he believed, and had reason to believe, prejudice and local influence existed in Louisiana to such extent as to injure or imperil his rights. Upon this showing and a bond the court made an order declaring the case removed to the Federal Court for the Eastern District of Louisiana, at its November term, 1881 (record, page 23). So far all was triumph.

The next term of the federal court commenced on the 7th of November, 1881. Hart, on that day, went in the federal court, and on the *ex parte* representation of counsel obtained an enlargement of the time to file the transcript until the 14th of November, 1881 (record, page 1). The transcript appears, however, to have been filed on the 7th of November, 1882, but this is doubtless one of the numberless blunders occurring all through the printed record. Probably the filing was November 7th, 1881. A motion to remand was made, and failed. A trial

In the case of the *New Orleans Tax-Payers' Association vs. the City of New Orleans, 33 A. 567*, the Supreme Court of the State declared this amendment operative from the 2d of November, 1874, until the adoption of the present new constitution, on January 1st, 1880, and adjudged that it operated upon all parties dealing with the city of New Orleans; that every person dealing with the city was bound by its condition, and could get no obligation from the city beyond a claim on the revenues of the current year during which they were dealing with the city; that the city could not issue any evidence of indebtedness or warrant not drawn "against cash actually in the treasury." When strenuously pressed, on application for rehearing, to change their ruling, the court affirmed the same in all particulars.

Therefore, at and before the time of the institution of this suit, the settled law of the State was, that all pretended ordinances and appropriations referred to in the plaintiff's petition (record, page 4 *et seq.*) were void, and could not be merged in any general judgment against the city; that all of the pretended ordinances, between November 2d, 1874, and January 1st, 1880, were void, and that all warranting under them, except against actual funds, *was a felony.*

This being the declared law of the State, Judah Hart (if he be the real party in interest), claiming to be a citizen of the State of New York, claims to have gathered up a lot of tainted ordinances, alleging that they had been transferred to him by the parties named in the ordinances, together with "*their right to obtain payment of the same.*"

He was unable to find any original jurisdiction in any federal court for a suit, contemplated by him, based on the tainted ordinances, because his trash, whatever merit he might claim for it, could not be classed either as "promissory notes, negotiable under the law merchant," or "bills of exchange," under the jurisdiction act of March 3d, 1875. He therefore invited cunning to his aid, and, on the 4th day of November, 1881,

filed the petition, set forth on page 2 of the printed record, in the Civil District Court for the parish of Orleans. On the same day citation was served on the city, and on the same day Hart filed in the State court a petition for removal (record, page 22) to the federal court, under the "local prejudice" clause of article 639, R. S.

In his petition he referred to the article by simple reference to its number and the third sub-division thereof. The petition contained no averment of belief or reason for belief in any prejudice or local influence, but simply refers to some affidavit alleged to be filed with the petition. The *next day* —to-wit: on the 5th of November, 1881—he filed an alleged affidavit (record, page 22), purporting to have been made before one George R. Jaques, "Commissioner of Deeds of Louisiana," No. 252 Broadway, New York, sworn to on the 25th day of October, 1881—ten days before this suit was instituted or had any existence, and ten days before any judicial action was had in this controversy in any court: that is, *one day after* he filed his removal petition he filed in the State court an affidavit made *ten days before his suit had any existence*, that he believed, and had reason to believe, prejudice and local influence existed in Louisiana to such extent as to injure or imperil his rights. Upon this showing and a bond the court made an order declaring the case removed to the Federal Court for the Eastern District of Louisiana, at its November term, 1881 (record, page 23). So far all was triumph.

The next term of the federal court commenced on the 7th of November, 1881. Hart, on that day, went in the federal court, and on the *ex parte* representation of counsel obtained an enlargement of the time to file the transcript until the 14th of November, 1881 (record, page 1). The transcript appears, however, to have been filed on the 7th of November, 1882, but this is doubtless one of the numberless blunders occurring all through the printed record. Probably the filing was November 7th, 1881. A motion to remand was made, and failed. A trial

of some sort was had in the federal court, resulting in a verdict against the city for $121,697.18. This result was reached on February 16th, 1882. An unavailing motion for a new trial followed the verdict. Then came a queer paper, said to be "in the nature of a remittitur," which, when added to the general judgment upon the verdict, makes one of the most singular and unique judgments ever rendered in a court of law. The effect, apparently, is to render the judgment *less* than the general judgment (record, page 34).

In substance it is decreed that, by reason of plaintiff's consent "in the nature of a remittitur," *for the purpose of avoiding a question arising on the motion for a new trial*—

"That in case the plaintiff shall hereafter apply for a mandamus to compel the levy of taxes to pay amount herein decreed, or any part thereof, he shall be bound by all of the limitations, if any, as to the extent of the taxing power of said defendant, which were in force at the time the contracts herein sued upon were made between the city and the transferers of the plaintiff, viz.: that the plaintiff shall not have the right to compel the levy and collection of taxes in any one year at a greater rate than that which was binding upon the defendant at the time said contracts were made."

On the 14th of March the city of New Orleans sued out a writ of error to reverse this judgment, with a bond for costs, not operating as a supercedeas (record, page 69).

Hart, the plaintiff in the court below, then began a general onslaught on the city, in order to avoid any resort to a mandamus, in an endeavor to make the money named in the judgment on execution.

On the 14th March, 1882, Hart came into the Circuit Court and filed what he termed *a supplemental petition* in his cause, to be found on page 37 of the record. This petition is entitled, in the cause of Hart vs. The City of New Orleans, and recites that the plaintiff has a judgment for $121,627.18; that he has issued a writ of *fi. fa.*, and having reason to believe that the Canal and Claiborne Streets Railroad Company, the Orleans Railroad Company, and the New Orleans Sugar Shed Com-

pany, corporations organized under the laws of the State of Louisiana, third persons, are indebted to the defendant in execution, or have property or effects in possession or under control belonging to the said defendant, or are indebted to said defendant in execution, that petitioner has caused a seizure to be made in the hands of said persons, and prays that the Canal and Claiborne Streets Railroad Company be cited and ordered to answer, under oath, the annexed interrogatories on facts and articles; and obtained an *ex parte* order from the court, directed to the Canal and Claiborne Streets Railroad Company, commanding it to answer the interrogatories on oath and in writing.

The court will perceive that the city of New Orleans, the defendnnt in judgment and execution, *was not made a party to this supplemental proceeding or petition*, nor was it cited to answer or to be in court to hear or be bound by any judgment, which, if rendered as prayed for, had the effect to take away from her a credit and discharge a debt due, as it was alleged, from the Canal and Claiborne Streets Railroad Company to the city.

On the 29th day of March, 1882, the railroad company filed its answer to the interrogatories on facts and articles, as follows (record, page 41):

"The Canal and Claiborne Streets Railroad Company, made "garnishee herein, now comes into court, and for answer to "the interrogatories propounded by and through its president, "E. J. Hart:

"To the first interrogatory, no, except taxes of the year "1882.

"To the second interrogatory, no, except taxes of the year "1882.

"To third interrogatory, no.

"And for a full and correct statement of the facts upon "which the above answers are made, respondent, further an- "swering, says, that the privilege of the right of way of the "said Canal and Claiborne Streets Railroad Company was "granted for and in consideration of a bonus of two-sixteenths

"of a cent per passenger, payable [monthly],* and that the "rate of fare is five cents per passenger; that the total re- "ceipts of the company from 1st March, 1870, to 15th March, "1882, are—

"For the year	1870	$ 118,515 20
" " "	1871	152,098 75
" " "	1872	144,373 05
" " "	1873	136,656 60
" " "	1874	115,635 40
" " "	1875	100,095 95
" " "	1876	96,101 60
" " "	1877	89,701 90
" " "	1878	90,205 20
" " "	1879	89,267 25
" " "	1880	95,269 45
" " "	1881	98,591 70
" " "	1882	20,889 60
		$1,347,391 65

"Your respondent further says that the receipts from the "15th March, 1872, to the 15th March, 1882, amount to the "sum of $1,046,918.

"Your respondent, further answering, says that he is in- "formed and believes that the bonus was in lieu and place of "the license; that the city could not claim both; that it has "ceased to demand the bonus, but has imposed a license on "the company, and the company has paid the same in 1880, "based on the receipts of 1879; in 1881, based on the receipts "of 1880; and in 1882, based on the receipts of 1881, viz.: "$375 each year, making in all $1.125, thereby releasing the "company from any obligation to pay any bonus for said years. "And respondent further says that he is informed and believes "that any claim for the bonus based on the receipts of preceding "years is prescribed.

"Respondent further swears that the Canal and Claiborne "Streets Railroad Company has already been garnisheed in "the suit of Myra Clark Gaines, Samuel Smith, subrogee, vs. "City of New Orleans, No. 2695 of the United States Circuit "Court, and of Charles Parsons vs. City of New Orleans, No. "8808 of same court; and that should judgments be rendered "against said company they will amount to more than the "company can in any event owe.

"Respondent further says that the company has claims

*The word "monthly" in brackets, was by clerical error of the clerk of the Circuit Court, omited in the transcript, but has since been supplied by stipulation.

" against the city of New Orleans for damages caused by over-
" flows in 1869, 1871 and 1881, and against which it should
" have been protected by the city; and that the amount due
" for said damages exceeds any amount which would be due
" for the bonus, if any was due.

" For this, and other reasons, the city has not required the
" bonus."

On the 30th day of March, 1882, Hart, by his counsel, came into court and filed the following extraordinary paper (record, page 42):

" On motion of E. H. Farrar and of A. G. Brice, of counsel
" for plaintiff, and on suggesting to the court that the answers
" of the Canal and Claiborne Streets Railroad Company and
" of The New Orleans Sugar Shed Company, herein filed to
" the interrogatories in garnishment propounded to them, are
" false and untrue, and that they are indebted to the city of
" New Orleans in much larger sums than there stated in their
" said answers; and on further suggesting that this plaintiff
" traverses the said answers both in law and fact—

" *It is ordered by the court that the said Canal and Claiborne*
" *Streets Railroad Company and the said New Orleans Sugar*
" *Shed Company do show cause, on Wednesday, the 5th day of*
" *April, 1882, at 11 A. M., why the said interrogatories should*
" *not be taken for confessed, and why judgment should not be ren-*
" *dered against them for the amount of plaintiff's claim, with in-*
" *terest and costs.*"

The court adopted this paper, and made the *scire facias* portion thereof an order of the court.

This document, while containing all manner of slashing allegations and denials in the way of recital, was and in fact is nothing but a *scire facias*, commanding the railroad company to be in court on the 5th of April, to show cause why the *interrogatories should not be taken for confessed* and why *judgment should not be rendered against them for the amount of plaintiff's claim, with interest and costs.* This was the sole issue tendered to the Canal and Claiborne Streets Railroad Company or to the court.

The proceedings on the return of this *scire facias* were extraordinary. It is difficult to comprehend with what propriety or authority a jury could be intervened to determine

whether answers are to be taken as confessed, and the party interrogated punished for contumacy by condemning him to pay an entire judgment, *irrespective of the fact whether he owed anything or not.* Yet a jury *was* called in to try this *scire facias* that is to say, to try whether the answers were to be taken as confessed or not. In some form this novel proceeding was crowded through with the aid of a jury, and that jury found a verdict, as they call it, in favor of plaintiff, Hart, and against the Canal and Claiborne Streets Railroad Company, for $33,684 74, with interest at the rate of five per cent. per annum on the various sums set forth in the verdict—i. e., on

$ 2,962	88	with interest at	5 per cent.	from 1st July, 1870.
3,802	46	"	"	" 1st July, 1871.
3,609	62	"	"	" 1st July, 1872.
3,416	41	"	"	" 1st July, 1873.
2,890	63	"	"	" 1st July, 1874.
2,502	39	"	"	" 1st July, 1875.
2,402	54	"	"	" 1st July, 1876.
2,242	54	"	"	" 1st July, 1877.
2,255	13	"	"	" 1st July, 1878.
2,231	68	"	"	" 1st July, 1879.
2,381	73	"	"	" 1st July, 1880.
2,464	79	"	"	" 1st July, 1881.
522	24	"	"	" 1st July, 1882.
$33,684	74			

If this cause had been on trial in a suit instituted by the city of New Orleans against the plaintiff in error, the only pretense of right to interest, even if the answers were taken as confessed and were held to disclose no defence, would rest on the statutes of Louisiana allowing statutory interest at the rate of five per cent. on all liquidated sums from the date of liquidation.

Under the answer of the Canal and Claiborne Streets Railroad Company, the bonus due to the city of New Orleans, if

any was due at all, was payable *monthly;* and if it is assumed that two-sixteenths of one cent *per capita* on passengers was liquidated at the end of *every month*, statutory interest could not be demanded until the *end* of each *month;* and yet the jury awarded *statutory interest*, divided the year in the middle, and charged interest on the *total supposed bonus for each year from the first of July of each year.* This is certainly a most extraordinary labor-saving system of mathematics, so palpably erroneous that it ought at least to be explained on this motion to dismiss or affirm.

The Canal and Claiborne Streets Railroad Company importuned the court for a rehearing; this was refused. They then moved in arrest of judgment upon the manifest insufficiency of the record and proceedings. This motion is set out on page 52 of the printed record, and contains the ten grounds designated by the learned counsel of the mover "ten utterly frivolous grounds."

The motion, he says, is "called a motion in arrest of judgment"—in his opinion an extraordinary and unheard of method of objection to proceedings on the ground of irregularity or nullity. This motion was refused, and, although probably unnecessary, a bill of exceptions was taken to the ruling of the court on the refusal.

The alleged judgment against the Canal and Claiborne Streets Railroad Company, as garnishee, was signed on the 26th of April, 1882, and thereupon the Canal and Claiborne Streets Railroad Company sued out this writ of error (record, page 70), and annexed thereto, under the statute, an assignment of errors (record 71 *et seq.*) To this assignment there has been no joinder.

The following is the assignment of error: * *

"And that there is also error in this, to-wit: that by the record "aforesaid it appears that the judgment aforesaid, in the form "aforesaid, was given for said Judah Hart against the said "Canal and Claiborne Streets Railroad Company, as garni-

"shee, whereas, by the law of the land, said judgment ought "to have been for the said Canal and Claiborne Streets Rail- "road Company and against the said Judah Hart.

"And that there is also error in this, to-wit: that all of the "proceedings and pleadings in said supplemental garnishee "proceedings, against the said plaintiff in error, ought to have "been held and adjudged void, irregular, and insufficient to "warrant and sustain any judgment against said plaintiff in "error, in manner and form as the same are of record; whereas "the same and the said judgment thereon were held erroneously "to be sufficient and adequate in law to warrant said judg- "ment and execution.

"And that there is also error in this, to-wit: that at the "time when judgment was rendered against the Canal and "Claiborne Streets Railroad Company the city of New Orleans, "the alleged defendant in judgment and execution upon which "said supposed garnishee proceedings are predicated, was not "made a party to said supposed garnishee proceedings, nor "was there any due and lawful citations of the defendants "named in said supplemental petition, as, by the law of the "land, there should have been.

"And that there is also error in this, to-wit: that the said "city of New Orleans, the original defendant, was not made "a party to said supplemental proceedings in any lawful man- "ner, by any lawful service or citation; and the said plaintiff "in error, the Canal and Claiborne Streets Railroad Company, "is in no manner, by said judgment, protected against the "city of New Orleans, in the event of proceedings by said "city of New Orleans against said plaintiff in error for the "same demand.

"And there is also error in this, to-wit: that at the time "when the Circuit Court of the United States for the Eastern "District of Louisiana rendered said judgment against said "plaintiff in error, there was no lawful issue of fact or law "made or existing between the said Judah Hart or any other "party to the record, on the allegations and demands set forth "in said supplemental petition, either by default, exception or "answer to said supplemental petition, as in law there should "have been.

"And that there is also error in this, to-wit: that at the "time when the judgment aforesaid was made and entered, "there was before the court, for its action and judgment, "simply a motion on behalf of the said Judah Hart that the "answers of the said plaintiff in error to the interrogatories on "facts and articles be taken as confessed in manner and form

"as the same were made and of record; and that it appears "from the record thereof that if said answers be taken as true "in manner and form as said answers are of record, there "should have been judgment in favor of the said plaintiff in "error and against the said Judah Hart.

"And that there is also error in this, that as shown by the "record aforesaid, and the answers to interrogatories on facts "and articles aforesaid, if there in fact was any indebtedness "by the said Canal and Claiborne Streets Company to the said "city of New Orleans, by reason of any tax upon passengers, "the same was a part and portion of the public revenues of the "city of New Orleans, and not liable in law to seizure upon "execution or by garnishee preceedings to satisfy any judg- "ment of the character of the said judgment of the said Judah "Hart against the city of New Orleans, the said supposed debt "being a part or portion of the public revenues of said city of "New Orleans, if said debt had any existence.

"And that there is also error in this, to-wit: that there was "a judgment against the said Canal and Claiborne Streets "Railroad Company, plaintiff in error, on its said motion for "the arrest of any judgment upon the record and verdict in "this cause, as appears by the record aforesaid, whereas, by "the law of the land, there should have been judgment on said "motion in favor of the said Canal and Claiborne Streets Rail- "road Company, and said proceedings and judgment should "have been arrested as prayed for in said motion." * * *

ARGUMENT ON MOTION.

The motion to dismiss this writ of error is manifestly not serious. Apparently it is a scheme to get some ground under rule 6 on which to base an excuse for a motion to affirm.

The litigation between Hart and the city of New Orleans ended with the final judgment against the city.

The original citation of plaintiff in error in this cause in the lower court, was a citation to answer the alleged supplemental petition against the Canal and Claiborne Streets Railroad Company. This petition was supplemental in every sense of the word—*supplemental* as to all parties.

The city of New Orleans *was not joined* in the supplemental petition, never cited, never had its day in court, *never was a party to or bound by the verdict or judgment against* the plaintiff in error now complained of.

This was urged on the motion for a new trial and in arrest of judgment.

The judgment complained of is a judgment *in favor of Judah Hart* against *the Canal and Claiborne Streets Railroad Company*, and there is *no other party to the judgment.* At the time the supplemental petition was filed, not only was *all litigation* against the city under the original petition and citation addressed to the city at an end, but the record had been removed to this court by writ of error, though without supersedeas.

In the circuit court the defendant in error was willing to gather in all of the supposed credits of the city *without notice to the city*, and without bringing the city into court in order that those who might be compelled to acknowledge Hart as a new creditor might be protected by a judgment in a proceeding to which the city of New Orleans was a party, and bound as the defendant in the original judgment. The defendant in error is only zealous for the city's supposed rights when he reaches this court.

The writ of error in this cause *is as broad as the judgment complained of, and is between the only parties to that judgment.* The judgment is *several*, both as to Hart and the plaintiff in error.

The counsel for defendant in error has cited all of his authorities under this head of his brief in evident error as to their character, for all the authorities cited are cases where there has been *non-joinder of plaintiffs in error.* It was settled in *Payne vs. Miles, 20 Howard 219*, that no one can be made a defendant in a writ of error who is not a party to the judgment in the court below. This case has never been questioned.

The *only plaintiff* in the judgment complained of is *Judah Hart.* The *only* defendant in judgment is *the plaintiff in error.* They are the parties to the writ of error in this cause. The objection that the city is not an obligee in the bond is, to use the counsel's favorite word, "frivolous." The bond follows the judgment. The city is not named in the judgment, and could

not enforce it as a judgment in its favor, nor does the judgment bar the city in any particular. The bond suggested by the defendant in error would obligate the plaintiffs in error, as a condition for *supersedeas*, to agree to pay a judgment in favor of Judah Hart to the city of New Orleans, a third party, who has no judgment against the plaintiff in error.

The objection that it does not appear that Joseph A. Shakespeare was mayor of New Orleans, is based upon a clerical error in the return on the citation. It is hardly dignified. The answer is, that *no service on the city was necessary*, as it is not a party to the judgment; and, further, that the clerical error and omission has been corrected by affidavit of the officer who made the service; and, further, if the city was a necessary party, it has appeared by counsel. The grounds for dismissal were evidently invented to excuse the motion to affirm. This motion is a palpable case of abuse of rule 6.

Protesting against the system of tactics which compels plaintiff in error to practically try his case twice in this court, we proceed to the question whether there should be an affirmance because "*there is nothing in the record upon which error can be assigned; that the assignment of error made by plaintiff is so utterly frivolous as not to need further argument.*"

The amendment of this rule, upon which it is claimed this motion rests, needs further amendment to make its language comply with the motion of defendant in error. It must appear, as the rule now stands, that the writ was taken for delay only, or that the question on which the jurisdiction depends is "so frivolous as not to need further argument."

It has always been supposed by the profession that the amendment, even as last amended, was adopted to enable the court to deal chiefly with writs of error in cases coming from State courts, where the question of jurisdiction always depends upon some determination of a "federal question," and that it would be sparingly used in cases brought up from the federal courts.

It is manifest that the defendant in error is himself estopped from denying the jurisdiction of the circuit court. If the circuit court had jurisdiction of the cause and could render the judgment complained of, the jurisdiction of this court depends upon the amount in the controversy alone, and as this amount exceeds $33,000, it is not clear how the defendant can question the "question upon which jurisdiction depends."

The counsel for defendant in error says that the motion in arrest of judgment and the assignment of errors are "utterly frivolous," because a motion in arrest of judgment is "unknown in Louisiana." To some extent the latter proposition is probably true, and an examination of the records sent up to this court from the Louisiana circuit will doubtless show many other incidents and methods of raising questions in a jury trial at law which are also "unknown in Louisiana," or at least known indifferently well. The counsel should have consulted *McAllister vs. Kuhn, 6 Otto 87.* In Louisiana courts the jury is the judge of both law and fact in all civil causes. Happily this is "unknown out of Louisiana." Jury trial in the Louisiana State courts is not a good school for the system of jury trials in federal courts.

The fact that in order to support his allegation that the errors assigned are "utterly frivolous," the counsel has cited pages of statutes and *sixty-three cases*, is a commentary on the motion to affirm. But suppose the errors assigned are not fatal? The test of the right of a party to a writ of error is *not that the judgment* complained of be *actually* fatally erroneous, but that the *party complaining believes* the judgment erroneous; otherwise this court would possess a very limited jurisdiction.

In *Hecker vs. Fowler, 1 Black. 95*, a motion to dismiss and affirm was made upon the same ground as in this cause, an alleged want of error apparent on the face of the record. The court refused the motion, Chief-Justice Taney declaring—

"That want of jurisdiction and irregularity of the writ are "the only grounds for dismissal. Where the judgment ap- "pears to have been rendered which the party is entitled to "have revised in this court, and it is also seen that it comes "here for such revision upon proper process, duly issued, all "other questions must await the final hearing."

In the same cause, the Chief Justice also says: "It is not "necessary, by the practice of this court, for the party who "brings a cause here to specify upon the record the errors he "complained of, and they are not even informally brought to "our notice until the argument is heard."

Are the errors assigned and apparent on the face of the record in this case "so utterly frivolous" as to be throttled on a motion to dismiss?

The following are at least grave and serious questions to be tried apparent on the face of this record, and sufficiently grave to demand a trial in regular form:

First—The garnishee having not only the undoubted right, but actual duty to see that the pretended judgment which he is asked to pay is not on its face a nullity, this court is called on to determine whether the circuit court ever obtained jurisdiction of the cause, and determine whether it will sanction the use which has been made of section 639, R. S., in the attempted transfer of this cause to the federal court; whether the affidavit of Judah Hart, made in New York *ten days before he had any suit in the State courts of Louisiana*, can be made so potent as to *frank* a suit or suits to be *afterwards* brought by him; whether such an affidavit can be made to apply to a suit whose existence commenced *ten days after his swearing*, when there is nothing in the affidavit to identify it as an affidavit with this action, except the docket No. 4414, which must have been inserted *after* the affidavit was sworn to and transmitted by mail to New Orleans, as it is obvious that Hart could not swear in New York to a number on the docket of a Louisiana court in New Orleans, when that docket number at the time of his swearing had no existence, and did not exist until ten days after his New York swearing was over; and whether the third

sub-division of article 639 is so elastic that the filing of this ominous affidavit, *one day* after the petition for removal was filed, is compliance with the section. Certain it is that if this case is an illustration of the use to which section 639 can be applied, there should be no enlargement of its range by judicial construction.

Second—Whether, under the state of the law as it existed at the date of the proceedings complained of, any lawful execution could issue on the judgment against the city. This demands a judicial construction of article 916, Revised Statutes, which limits the federal courts to the process of execution on money judgments as it existed in the States at the time of the adoption of the Revised Statutes, June 22d, 1874. When this section was adopted and became the law—indeed, from March 7th, 1870, by the terms of the act of the Louisiana legislature *(No. 5 of the session laws of 1870, page 60, extra session)*—no execution could be issued against the city of New Orleans by any of the State courts to enforce the payment of any money judgment. Another method of enforcing payment was provided. This law has been in force at all times since and it is still in force; therefore the court, in this case, must determine whether this law of Louisiana, held valid by its own court and by this court in *Louisiana vs. New Orleans*, 102 *N. S.* 203, is by adoption the law of the United States in Louisiana so far as the city of New Orleans is concerned; for if no execution could issue against the city of New Orleans when Hart obtained his judgment, the pretended garnishee proceedings are void *ab initio.*

Third—Whether, either on principle or by statute, a judgment creditor can institute garnishee proceedings by supplemental petition without making the judgment debtor a party defendant, in order that he may have his day in court, on the questions, among others, whether there is any valid judgment, or if a valid judgment at any time existed, whether it has been satisfied, either by payment or by prior levy, and also to assert his right to be heard in a controversy between the judgment

creditor and his alleged debtor; whether the garnishee can be proceeded against without his creditor being brought into court, to be concluded by the judgment against the garnishee, where an absolute judicial transfer of creditorship is sought to be effected by the proceedings.

Fourth—The city of New Orleans, being a public-political corporation, administering public affairs *for* the public within its limits, whether, even if a lawful execution could issue, such execution not being levyable on any of the public property or revenues of the city, the pretended supplementary petition against the Canal and Claiborne Streets Railroad Company is not bad on general demurrer (even if it had proper parties), because it does not make it appear or show that the pretended property or indebtedness sought to be gathered in is not public property in public use, or indebtedness other than the public revenues of the city, and not beyond the reach of execution, and whether, for that reason, the supplementary petition is not fatally defective as a basis of any judgment or proceedings against the alleged garnishee.

Fifth—Whether there was any issue of fact made by the rule or motion, in the *nature of a scire facias* by the plaintiff in judgment, which could lawfully go to or should have been given to a jury, or any issue that a jury could determine.

Sixth—Whether, if the utmost prayer of this motion in the nature of *scire facias* had been accorded and given to him, the judgment complained of is not erroneous and void or voidable for the reason that the bonus for the right to run street cars through the streets of New Orleans, if due at all, is public income and revenue of the city, and exempt from seizure to the same extent as uncollected taxes under all systems of law.

Seventh—Whether, if the interrogatories to the garnishee be taken as confessed, as prayed for in the *scire facias*, there is any basis for the judgment complained of either in law or in fact.

Eighth—Whether the general judgment in favor of the judgment creditor against the alleged garnishee for a specific sum

of money, without any regard to the amount of the judgment unsatisfied, is not fatally erroneous on the face thereof; and whether such judgment is authorized or can be justified under the laws of Louisiana.

Ninth—Whether the verdict for statutory interest on alleged monthly installments of bonus, shown by the answer of garnishee to be payable at *the end of each month* (if due at all), is not erroneous on the face thereof, in finding interest on the gross yearly amount of annual bonus and giving interest from the *first of July of each year*. This is perhaps economical, but certainly not correct mathematics.

Tenth—Whether, under the interrogatories or answers, if taken as confessed, there was either an account stated, or that liquidation of demand which is indispensable to carry statutory interest at the rate of five per cent. or any other rate prior to judicial demand, or to avoid the application of three years' prescription established by the laws of Louisiana as the prescription of unliquidated accounts.

Eleventh—Whether, under the illegal and irregular proceedings in this cause, the city of New Orleans is concluded by the alleged verdict and judgment in garnishee proceedings in favor of Judah Hart, rendered in a proceeding to which the city was no party, and whether, in the event of compulsory or voluntary payment of the sum adjudged, the plaintiff in error can plead the judgment in bar of the demand of the city for the same anount, either as public revenue or as a private creditor (if such relation can exist).

There are other serious questions and manifest errors in the record, apparent upon inspection; but enough has been suggested, considering the present stage of the proceedings, to show that affirmance of the motion would in effect deprive the plaintiff in error of a guaranteed right to full trial in regular form, with all its advantages.

The discussion of the questions made in the assignment of error, involves the consideration of voluminous statutes of

Louisiana and can only be fairly presented to the court upon oral argument, and certainly cannot be fairly considered or determined by the court on a motion of this character.

We assert with confidence that since March 17th, 1870, there has not been a line or word on the statute books of Louisiana, which can be construed as giving the federal or State courts authority to resort to garnishment process against the city of New Orleans, more than that, from the 17th March, 1870, garnishment process against the city based upon *fi. fa.* has been *absolutely prohibited.*

It is too clear for discussion that all systems of garnishment, as procedure, must depend upon *some statute*, and that there is no act of congress establishing any such general authority or procedure; therefore, the federal courts must find in some *statute of the State* "in which it is held" a warrant for the proceeding, and find, further, that the State law has *been adopted by congress;* or if the law has been adopted by rule of court since June, 1874, must find a *State statute* adopted by a *general rule* of the circuit court held in the State.

The federal Revised Statutes, as a law, was adopted June 22d, 1874. For all final process to enforce common law judgments for money, the federal courts must rest their authority upon section 916 of the Revised Statutes. Excepting in a few special instances, in no manner relating to suits between private individuals, there is no other authority for either the writ of execution or supplemental proceedings based on execution, where the judgment is in a suit at law for the recovery of money. The section 916, R. S., is as follows:

"The party recovering a judgment in any common law cause, "in any circuit or district court, shall be entitled to similar "remedies upon the same, by execution or otherwise, to reach "the property of the judgment debtor, as *are now* provided in "like causes by the laws of the State in which the court is held "or by any such laws hereafter enacted which may be adopted "by the general rules of such circuit or district court, "and such courts may from time to time, by general rules, "adopt such State laws as may hereafter be enforced in such

"State in relation to remedies upon judgments as aforesaid, "by execution or otherwise."

The original act from which this section was taken was adopted June 1st, 1872 (*17 Stat. at Large 197*). The defendant in error must base his right to garnishment process in this State court upon article 246 of the Code of Practice of Louisiana. There is no other State statute warranting garnishment *after* judgment. Section 246, or all of that portion of the section relied upon by the defendant in error, is printed on page 14 of defendant's brief under the erroneous number of 642. On March 17th, 1870, the legislature of Louisiana adopted an act entitled, "*An act to limit and restrict the power of courts to issue orders or writs of mandamus and fieri facias against the city of New Orleans and the officers thereof, and to declare the effect and prescribe the mode of satisfying judgments for money against the city of New Orleans.*" (*Session laws of 1870, extra session, p. 10*).

The second section of this act provides—

"That hereafter no writ of execution or *fieri facias* shall "issue from any of the courts in this State against the city of "New Orleans to enforce the payment of any judgment for "money against the city of New Orleans;"

and provides other methods and means of enforcing judgments against the city without resort to execution.

The third section of this act declares that the act shall go into immediate effect, and "that all acts and parts of acts in conflict with this act are hereby repealed so far as they are in conflict with the act." This act has continued in full force up to this date. It is therefore clear that both in 1872 and 1874, when the laws of the State were adopted by section 916 R. S., under the law of the State as it *then existed and was adopted*, process of execution against the city was *prohibited*. The federal courts took by adoption no right to issue execution against the city, and the circuit court had no legal right to issue execution originating *from any other source*, either *State* or *federal*. If this be true, the pretended *fi. fa.* in the case of *Hart vs. The City of New Orleans* is a nullity, and the marshal could not justify trespass under it.

It follows that all proceedings based on the pretended writ are void. But if we assume, for the purpose of argument, that the federal court had the right to issue an execution in this case, State statutes to the contrary notwithstanding, in that case the defendant is no better off, for the repealing clause of the act of 1870 carried with it all of the garnishment laws and provisions of the statute relating to seizure in the hands of third parties, *as far as the city of New Orleans* is concerned. Since the 17th day of March, 1870, article 246 of the Code of Practice has read:

" * * * *And whenever a party, plaintiff in a* " *cause, has applied for a writ of fieri facias against the defend-* " *ant* (provided that defendant is not the city of New Orleans), " *and has reason to believe that a third person has property or* " *effects,*" etc.

It is clear that even if the courts of the United States could legislate into existence a right to issue a *fieri facias* against the city of New Orleans, there is no right to superadd to the *fieri facias* supplementary proceedings, or the process of garnishment in a case where, under the laws of the State, such supplementary proceedings or garnishment is *prohibited* by statute.

Garnishment is in the nature of a statutory proceeding *in rem*. Its aim is to invest the plaintiff with a statutory right and power to appropriate, to the satisfaction of his claim against the defendant, property in the hands of the garnishee, or a debt due from the garnishee to the judgment defendant. It is a statutory grant to the plaintiff of a right of action in his own name against the defendant.

Drake on Attachment, paragraph 452.

Strong vs. Smith, 1 Metcalf 176.

Garnishee proceedings rest exclusively and entirely upon statutes, and are but substitutes for a creditor's bill. *Freeman on Execution, paragraph 392.*

In Louisiana a valid judgment and a lawful *fieri facias*, or

the right to a lawful *fieri facias*, are indispensable prerequisites to proceedings against any garnishee after judgment.

Featherstone vs. Compton, 3 A. 380.

Pollock vs. Williams, 9 A. 460.

Pooley vs. Snow, 12 A. 814.

If there is no valid writ of *fieri facias*, all proceedings are null and void *ab initio*. *Matta vs. Thomas, 21 A. 37.*

Since the act of 1870 there has been no statute permitting execution against the city of New Orleans, and therefore *no right* to garnishee process. The federal statutes on the subject are no broader than the State statute, and if it is conceded, even for the purposes of argument, that execution could lawfully issue in the case of Hart vs. The City of New Orleans from the federal court in Louisiana, it is clear that a creditor's bill is the only remedy at the hands of the judgment creditor; for the right to supplementary proceedings was repealed, and the act of congress took nothing of garnishee process by adoption, either under the act of 1872 or by the provisions of article 916, Revised Statutes. The only proceedings against garnishees directly authorized by any act of congress, are in suits by the United States against a corporation. *Revised Statutes, 935, 936, 937.*

The act of 1870, prohibiting the issue of executions against the city of New Orleans on money judgments, has been held constitutional and binding by the highest court in the State.

State ex rel. Carondelet Canal and Navigation Compauy vs. Mayor and Administrators of New Orleans, 30 A. 129.

State ex rel. Strauss vs. Brown, Administrator of Public Accounts, 30 A. 79; and was considered by this court in Louisiana vs. New Orleans, *12 Otto 203.*

The alleged garnishment proceedings find no support or assistance from federal legislation *prior* to the act of 1872 or the Revised Statutes of 1874. The first federal process act is the act of September 29th, 1789 *(1 Stat. at Large, 93)*. This act in its second section provides that, until further provision is

made, writs of execution in federal courts shall be the same as "now used or allowed in the Supreme Court" of the respective States then in the federal union. The territory now included in Louisiana was at that time subject to alien dominion and jurisdiction, and could not have been affected by the act.

The next federal legislation relating to process is the act of May 8th, 1792 *(1 Stat. at Large, 276)*, re-enacting the act of 1789 in so far as it related to executions, but provided for process in admiralty and equity. The first process act adopted after Louisiana became a State in the Union is the act of May 19th, 1828 *(4Stat. at Large, 278)*. This act, in effect, only extended former legislation to States admitted into the federal union "since the 29th day of September, 1789;" and enacted that writs of execution "shall be the same in each of the said States respectively as are now used in the highest court of general and original jurisdiction;" empowered the federal courts to adopt by rule subsequent changes made by the States or their courts; but the 4th section excluded Louisiana from the operation or benefit of the statute. In an act of congress adopted May 26th, 1824 *(4 Stat. at Large, 62)*, it was enacted—

"That the mode of proceedings in civil causes in the courts of "the United States that now are or hereafter may be estab- "lished in the State of Louisiana, shall be conformable to the "laws directing the mode of practice in the district courts of "said State."

Power was given to the judges to alter the times limited for different proceedings in State courts, and to make rules necessary to accommodate State procedure and practice to the organization of the federal courts and to federal laws. Beyond doubt, this act only related to practice in progressing a cause from its commencement to final judgment, and did not relate to final process after judgment. Even if it did, the act was repealed by both the act of 1872 *(17 Stat. at Large, 196)*, and the adoption of the Revised Statutes, June 22, 1874. If actu-

ally in force and unrepealed, its provisions do not aid the defendant in error; for if this act is to be construed as adopting process and proceedings as *they existed in Louisiana in 1824*, as the only act of the legislature of Louisiana relied on to warrant garnishment in aid of execution was not *adopted until 1839*, fifteen years afterwards, *garnishment* certainly is not a proceeding adopted by federal legislation of 1824. If, on the other hand, the act is to be considered as a process act, adopting for federal courts in Louisiana the law of the State as it might be found at the time when any future court "shall hereafter be established," the court in which Hart carried on his litigation and obtained judgment on his alleged garnishee proceedings is the Circuit Court of the United States for the Eastern District of Louisiana, a court which had its first existence, at least by its present name and style, on March 3d, 1881, eleven years after the latest date when execution and garnishee proceedings against the city of New Orleans ceased to be lawful or allowed by the State statutes. It is a sifinificant fact that the act of 1824 does not allude to process, even in the most remote manner. The only rule of the circuit court now in force, or which has been in force since the November term, 1875, of the late circuit court for the district of Louisiana, is the first paragraph of rule 1, to-wit: "The practice, modes of proceeding and process to be used in the courts, are controlled and regulated by the Revised Statutes of the United States, and will conform thereto."

If federal courts "held in" Louisiana, in default of authority granted by State or federal legislatures, can appeal to English statutes and common law in force prior to the Revolution for authority to issue writs to enforce money judgments, then we have *elegit*, *fieri facias*, *levari facias*, *capias ad satisfaciendum*, *venditioni exponas* for goods left in the hands of the marshal, at the expiration of the writ of *fieri facias*—in fact the entire menagerie of old English writs and remedies, with all of the old harsh and technical rules and practice as to *teste*, effect, duration,

etc. Federal courts have no more right to adopt or issue any of these writs by force of English or common law than they have authority to adopt and issue the writ *de excommunicato capiendo*.

The terms of section 916, Revised Statutes, limit the effect of executions on money judgments as it is limited by the State law, carrying, among its limitations, all of the exemptions from levy which attach to a like execution issued from a State court. Consequently property not within the reach of an execution from a State court, by reason of exemption from levy, is equally beyond the reach of an execution issued from a federal court. On the face of the record and proceedings in this cause, the alleged property–credit or debt of the Canal and Claiborne Streets Railroad Company, disclosed in the answer to interrogatories (if any such indebtedness appears), was beyond the reach of any execution from its character.

The power of the city of New Orleans to grant the right of way for street railroads over and through its streets, is not a private right or authority of the corporation, but is public in all respects and particulars. The price, consideration or bonus paid, or contracted to be paid, by grantees of the right of way, is of *the public revenues* of the city, to the same extent as are assessed taxes, and necessarily exempt from levy to the same extent. If exempt from levy, certainly beyond the reach of any garnishment process.

Municipality No. 1 of the city of New Orleans, at a time when the city was divided into municipalities, at one time leased out some real estate that had at one time been a public common on ground rents. The ground rents due from tenants were held beyond the reach of execution or garnishment.

New Orleans and Carrollton R. R. Co. vs. Municipality No. 1, 7 A. 148.

Egerton vs. Municipality No. 3, 1 A. 435.

Hart vs. Municipality No. 3, 6 A. 435.

Police Jury of West Baton Rouge vs. Mitchell and others, 1 A. 84.

It is clear, therefore, that had there been a statute authorizing the issue of execution against the city of New Orleans, the writ could not have been lawfully levied upon the bonus contracted to be paid by the Canal and Claiborne Streets Railroad Company to the city as consideration for its right of way through the streets. If such levy is ever held to be lawful, we shall next hear of a levy upon the *right of the city to grant street railroad franchises*, as, under the statute of Louisiana, execution against the property of an ordinary debtor can be levied upon nearly every right, tangible or intangible, and is peculiar in that respect. Since March 17th, 1870, the exemption of the property of the city of New Orleans and its credits from any levy, *has not depended upon the question whether the property was public or private* (if a municipal corporation can possess private property), nor upon the question whether the property was in *public use or not*, for the *entire property* of the corporation, irrespective of its character or destination, was exempted by statute. In *State ex rel. Carondelet Canal and Navigation Company vs. Mayor etc., 30 A. 129*, the Supreme Court declared: "The act No. 5 of 1870 forbids the enforcement of judgments against the city of New Orleans by execution," and *that all kinds of property held by the city was exempt from levy.* In *State ex rel. Strauss vs. Brown, etc., 30 A. 79*, the same court declared: "*The creditors of the city of New Orleans may sue and obtain* judgment, but the city *has no property or rights not exempt from seizure under execution, because the statutes forbid the issue of execution against the city.*"

The defendant in error can set up no complaint of impaired remedy by the operation of this act, for the act of 1870 antedates the oldest claim of the pretended transferer of Hart.

We respectfully insist now, and on the trial of this cause shall insist, that a *retroactive* act of congress is necessary to rescue the execution in the case of Hart against the city of New Orleans, with all the seizures from garnishments under it, from absolute nullity. The defendant in error, if, for the purpose of

argument, we admit that he can find any warrant for his execution and alleged garnishment, would be no better off. His alleged judgment against the Canal and Claiborne Streets Railroad Company, as he claims, is based upon a Louisiana statute of procedure; and we insist that the proceedings, as disclosed in the record, are void for non-compliance with the statute, and that the pretended verdict and judgment have no foundation or support in any statute of the State.

We do not propose, on the trial of this motion, to tire the court with discussion in reference to voluminous statutes to establish this proposition to its fullest extent, for it ought not to be required at this stage of the cause. We therefore simply call the attention of the court to the worthlessness of the supposed verdict and judgment against the Canal and Claiborne Streets Railroad Company, as it appears on the face of the record.

The only paper on which the verdict and judgment can rest, the only tender of any issue for trial, is in the document styled by counsel of defendant in error (also so named in the entry on the minutes of the court), "the traverse of the answers of the Canal and Claiborne Streets Railroad Company, and the only matter which ever *came on for trial*," is the issue or the issues tendered by that paper. The paper in question is set forth in full above, and is printed on page 42 of the printed record.

Now what is the issue tendered for trial by this document? It is this and nothing more: "*Why the interrogatories should not be taken as confessed*," and "*why judgment should not be rendered against them for the amount of plaintiff's claim and cost*," viz.: why the Canal and Claiborne Streets Railroad Company should not be punished to the full extent of Hart's judgment, interest and cost, for *contumacy in not answering the interrogatories* annexed to the supplementary petition, as required by law. The only law in force in the State which can be cited as a support for such a proceeding, is article 263 of the Code of Practice of the State. This article reads:

"If the garnishee, to whom interrogatories have been put. "refuse or neglect to answer the same under oath in the delay "of the law, such refusal or neglect shall be considered as a "confession of his having in his hands property belonging to "the debtor to satisfy the demand made against such debtor, "and judgment shall be rendered against him for the amoont "claimed by defendant (plaintiff) with interest and cost."

What earthly issue of fact triable by a jury is tendered by this paper? The only issues tendered are whether the Canal and Claiborne Streets Railroad Company *had refused or neglected to answer the interrogatories on oath "in the delay of the law."* This issue was triable *only by the record.* Whether the answers filed by the railroad company were so *invalid* as to authorize a judgment, that the company was in such contumacy and default as to be held *not to have* answered within the delay allowed by law, was an issue triable *only by the record* and by the inspection of the purported answers. There was nothing of fact *dehors* the record at issue. Whether the company was in such default as to "be considered as a confession of its having in its hands property belonging to the debtor sufficient to satisfy the demand made against such debtor, and whether, for that reason, "*judgment shall be rendered against him for the amount claimed by the defendant, with interest and cost,*" irrespective of the fact of actual indebtedness by the garnishee, as a *punishment to be pronounced against him*, was a *question of law* which could only be determined *by the record.*

This question was made purely a question of law by the terms of the statute. The only issue of fact which could go to the jury, if any issue of fact can be tortured out of this paper, was the single question, whether there had been any answers of any kind to the interrogatories propounded. The verdict, if any could have been rendered, should have been responsive to that issue. This issue could not have been sent to a jury in a Louisiana court, even under the tropical system of procedure which prevails there, where the jury in civil cases is the judge of *both law and fact*, as the fact was triable only by the record.

That no evidence can be heard on a rule to show cause why interrogatories in garnishee proceedings shall not be taken as confessed, and the penalty provided in art. 263, C. P., adjudged, was settled in *Hart vs. Dalgreen, 16 La. 559; Sturgis vs. Kendall, 2 A. 366; Henry vs. Bryce, 11 A. 691; Kimbrough vs. Castle, 19 A. 128.*

Something is said in the brief of defendant in error of the plea of prescription, found on page 43 of the printed record. This was a plea, not to the rule or *scire facias*, but to the alleged supplementary petition, and, as shown by the record, has never been tried or disposed of. By the terms of article 246 of the Code of Practice, the only statute authorizing garnishment proceedings under execution, "proceedings in garnishment under execution are declared to be governed by the statutes relating to garnishment *in cases of attachment.*" Article 247 of the Code of Practice provides that a creditor may, if he likes, add to his petition, or supplemental petition, interrogatories on "facts and articles;" but this is elective, and not compulsory. Article 252 of the same code enacts:

"If there be a garnishee made party to the suit, the clerk "must deliver or send to the sheriff a copy of the petition and "of the interrogatories annexed to it, if there be such, with a "summons directed to such garnishee to answer the same "within the delay given in ordinary suits." Article 262 of the same code enacts: "The garnishee who has been cited in a suit, "must put in his answer within the usual delay, declaring in "the same, fairly and truly, what property belonging to the "defendant he has in his possession, by whatever title he may "possess the same, as well as what sums he may owe to such "defendant, whether the same be due or not yet due, and if "interrogated on facts and articles, he must answer under "oath, clearly and categorically, each question put to him "of interrogatories on facts and articles: touching such "matter" Article 348 of the code is a definition: "In-"terrogatories on facts and articles are questions put in "writing, in the form of articles, and annexed to a petition or "to an answers to which one of the parties to the suit prays "that the other be ordered to respond under oath, in order to "make use of his answers as testimony in support of his demand "or to aid him in his defence."

Article 354 defines the use to be made of answers to interrogatories on facts and articles, as follows :

"The answers of the party interrogated are evidence, but do "not exclude adverse testimony, and shall be weighed by the "judge as other testimony." Article 356 enacts : "The party "wishing to avail himself of the confessions made by the ad- "verse party in his answer to an interrogatory on facts and "articles must not divide them ; they must be taken entire."

The court will perceive that answers in garnishment proceedings are placed on the same footing as interrogatories propounded in a bill in equity, the object being to obtain evidence to use on the trial of the real issue. This is made more evident by the terms of article 264 of this code, the only article which provides for the contradiction of the answers of the garnishee to interrogatories on facts and articles. This article enacts : * * *

"The plaintiff may, nevertheless, show the same to be false, "either by positive written proof or by the oath of two wit- "nesses worthy of belief, in the same manner as when inter- "rogatories on facts and articles have been put to a party in a "suit."

Establishing practically the same rule as in equity. It is as clear and unambiguous as legislation can make it, that the answer to the garnishment *suit* is the *answer* to the *supplementary petition*, and that the answers to interrogatories, if made, may be used as evidence on the trial of that issue. The defendant in garnishment proceedings has the right to make any issue he may see fit on the supplementary petition.

The plea of prescription in this case was a plea to the *supplemental petition*, and not a plea or *answer* to the *scire facias*, or pretended traverse, and has not been tried, as it did not go to the jury. Nothing contained in the supplemental petition has been tried as yet, as it appears by the record ; at least, there is no record of any such trial.

The cases referred to in the brief of defendant in error relate to proceedings, not had *under article 263* of the Code of Practice, to the end of having the interrogatories taken for con-

fessed, for want of sufficient answer, or any answer at all, as was done in this case, but relate to irregular proceedings taken under article 264 of the code, to compel the garnishee to *pay to the creditor*, not the entire amount of the creditor's *debt, with interest and cost*, but the sum absolutely due or to become due by him to the judgment debtor, his answers to the contrary notwithstanding. This method of proceeding was *not resorted to in any form* in this case. It needs no argument to establish. that proceedings under article 263 of the code are *punitive* They are set on foot to enforce a *penalty* for contumacy. That penalty is the *entire debt* due the creditor, with interest and cost, irrespective of the actual amount the garnishee may really owe to the judgment debtor. Proceedings under article 264 are had to ascertain and recover the *actual amount* due from the garnishee, his answers to the contrary notwithstanding. Under the latter article, the garnishee is in no worse condition than he would have been had he answered truthfully. The garnishee cannot be compelled to pay the entire claim of the defendant, by reason of *false answers*. It is only where he *refuses* or *neglects* to answer.

Hart elected to enforce a supposed remedy under *article 263*, and tendered no other issue. There was nothing else to be tried, and nothing to go the jury.

We have presented but few of the tropical crop of errors existing in this extraordinary record and apparent on its face, but enough, we trust, to show that conscientous counsel of the plaintiff in error could not advise the company to pay over to Hart (or those whom he may represent) money, which if due and owing, is a part and portion of the public revenues of the city, in a proceeding to enforce his rickety judgment against the city, which it seems clear must be reversed by this court when it is reached on the docket, and where the payment to Hart can be no protection against a demand for the same amount by the city, until the company has exhausted all lawful means of resistance, and until it has the sanction of the

highest court in the land, and until this remarkable procee - ing is declared effective by a court of last resort.

The plaintiff in error was advised by counsel that, consulting its own safety, it must sue out and prosecute the writ of error in this cause, and we believe that the advice was safe and proper.

The main case upon which Hart's judgment depends, and on which his judgment against the city was rendered, is in this court for review ; and unless a premium is to be offered for the character of exploits by which jurisdiction is claimed to have been acquired by the circuit court, must be reversed.

The defendant's in error anxiety for the immediate payment of his judgment, whether it be right or wrong, is not calculated to enthuse the court or any party not in interest with unbounded enthusiasm ; and we deem the claim to injury by delay set up by him, in his demand for ten per cent. damages, to be, in the favorite language and expression of his counsel, "so utterly frivolous" as to be unworthy of comment. Unless, in this connection, we suggest that from the proceedings in this cause it is possible that rule six should be again amended so as to protect litigants and prevent the abuse of its provisions; for, unless severe penalty in the way of exemplary cost is imposed upon those who avail themselves of the rule to make litigants useless trouble and expense, this court will become involved in useless labor in the nearly certain double inspection of every record brought up here on writ of error ; for certainly, since the refusal of this court to grant the motion to affirm in the case of the Connemara, 13 Otto 754, in a case where the sole question to be determined was the legal effect of a case stated in the final findings of facts by the circuit court in admiralty, there could have been no hope in the mind of the defendant in error in this case that his motion would prevail.

We respectfully submit, that the plaintiff in error is entitled to be heard on the merits in regular course ; that this motion

should be refused with exemplary cost, if this court has the the power to impose such penalty.

All of which is respectfully submitted.

JAS. R. BECKWITH,

Counsel for the Canal and Claiborne Streets R.R. Co., Plaintiff in Error.